

**Code
of the
Town of
Pomfret**

COUNTY OF CHAUTAUQUA

STATE OF NEW YORK

SERIAL NO. **..1.....**

GENERAL CODE
www.generalcode.com

2012

Town of Pomfret

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PREFACE

The Town of Pomfret has, over the years, passed through a process of legislative change common to many American communities. While only a few simple laws were necessary at the time of the establishment of the Town, subsequent growth of the community, together with the complexity of modern life, has created the need for new and more detailed legislation for the proper function and government of the Town. The recording of local law is an aspect of municipal history, and as the community develops and changes, review and revision of old laws and consideration of new laws, in the light of current trends, must keep pace. The orderly collection of these records is an important step in this ever-continuing process. Legislation must be more than mere chronological enactments reposing in the pages of old records. It must be available and logically arranged for convenient use and must be kept up-to-date. It was with thoughts such as these in mind that the Town Board ordered the following codification of the Town's legislation.

Contents of Code

The various chapters of the Code contain all currently effective subdivision of land and zoning legislation of a general and permanent nature enacted by the Town Board of the Town of Pomfret, including revisions or amendments to existing legislation deemed necessary by the Town Board in the course of the codification.

Division of Code

The Code is divided into parts. Part I, Administrative Legislation, contains all Town legislation of an administrative nature, namely, that dealing with the administration of government, that establishing or regulating municipal departments and that affecting officers and employees of the municipal government and its departments. Part II, General Legislation, contains all other Town legislation of a regulatory nature. Items of legislation in this part generally impose penalties for violation of their provisions, whereas those in Part I do not.

Table of Contents and Grouping of Legislation

The Table of Contents details the arrangement of material alphabetically by chapter as a means of identifying specific areas of legislation. Wherever two or more items of legislation have been combined by the editor into a single chapter, the use of article designations has preserved the identity of the individual enactments, and the titles of the articles are listed beneath the chapter title in order to facilitate location of the individual enactments.

Reserved Chapters

Unassigned chapter numbers do not appear in the Table of Contents but are available for assignment to new enactments. In this manner, new subject matter can be included alphabetically.

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Pagination

A unique page-numbering system has been used in which each chapter forms an autonomous unit. The first page of each chapter is the number of that chapter followed by a colon and the numeral "1." Thus, Chapter 6 would begin on page 6:1. By use of this system, it is possible to add or to change pages in any chapter, or add new chapters, without affecting the sequence of subsequent pages.

Numbering of Sections

A chapter-related section-numbering system is employed in which the section number indicates the number of the chapter and the location of the section within that chapter. Thus, the first section of Chapter 30 would be § 30-1, while the sixth section of Chapter 57 would be § 57-6.

Scheme

The scheme is the list of section titles that precedes the text of each chapter. These titles are carefully written so that, taken together, they may be considered as a summary of the content of the chapter. Taken separately, each describes the content of a particular section. For ease and precision of reference, the scheme titles are repeated as section headings in the text.

Histories

At the end of the Scheme (list of section titles) in each chapter is located the legislative history for that chapter. This History indicates the specific legislative source from which the chapter was derived, including the enactment number, if pertinent, and the date of adoption. In the case of chapters containing parts or articles derived from more than one item of legislation, the source of each part or article is indicated in the text, under its title. Amendments to individual sections or subsections are indicated by histories where appropriate in the text.

General References; Editor's Notes

In each chapter containing material related to other chapters in the Code, a table of General References is included to direct the reader's attention to such related chapters. Editor's Notes are used in the text to provide supplementary information and cross-references to related provisions in other chapters.

Appendix

Certain forms of local legislation are not of a nature suitable for inclusion in the main body of the Code but are of such significance that their application is community-wide or their provisions are germane to the conduct of municipal government. The Appendix of this publication is reserved for such legislation and for any other material that the community may wish to include.

PREFACE

Disposition List

The Disposition List is a chronological listing of legislation, indicating its inclusion in the publication or the reason for its exclusion. The Disposition List will be updated with each supplement to the Code to include the legislation reviewed with said supplement.

Index

The Index is a guide to information. Since it is likely that this publication will be used by persons without formal legal training, the Index has been formulated to enable such persons to locate a particular section quickly. Each section of each chapter has been indexed. The Index will be supplemented and revised from time to time as new legislation is added.

Instructions for Amending the Code

All changes to the Code, whether they are amendments, deletions or additions, should be adopted as amendments to the Code. In doing so, existing material that is not being substantively altered should not be renumbered.

Adding new sections. Where new sections are to be added to a chapter, they can be added at the end of the existing material (continuing the numbering sequence) or inserted between existing sections as decimal numbers (e.g., a new section between §§ 65-5 and 65-6 should be designated § 65-5.1).

Adding new chapters. New chapters should be added in the proper alphabetical sequence in the appropriate division or part (e.g., Part I, Administrative Legislation, or Part II, General Legislation), utilizing the reserved chapter numbers. New chapter titles should begin with the key word for the alphabetical listing (e.g., new legislation on abandoned vehicles should be titled "Vehicles, Abandoned" under "V" in the Table of Contents, and a new enactment on coin-operated amusement devices should be "Amusement Devices" or "Amusement Devices, Coin-Operated" under "A" in the Table of Contents). Where a reserved number is not available, an "A" chapter should be used (e.g., a new chapter to be included between Chapters 166 and 167 should be designated Chapter 166A).

Adding new articles. New articles may be inserted between existing articles in a chapter (e.g., adding a new district to the Zoning Regulations) by the use of "A" articles (e.g., a new article to be included between Articles XVI and XVII should be designated Article XVIA). The section numbers would be as indicated above (e.g., if the new Article XVIA contains six sections and existing Article XVI ends with § 166-30 and Article XVII begins with § 166-31, Article XVIA should contain §§ 166-30.1 through 166-30.6).

Supplementation

Supplementation of the Code will follow the adoption of new legislation. New legislation or amendments to existing legislation will be included and repeals will be indicated as soon as pos-

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sible after passage. Supplemental pages should be inserted as soon as they are received and old pages removed, in accordance with the Instruction Page which accompanies each supplement.

Acknowledgment

The assistance of the Town officials is gratefully acknowledged by the editor. The codification of the legislation of the Town of Pomfret reflects an appreciation of the needs of a progressive and expanding community. As in many other municipalities, officials are faced with fundamental changes involving nearly every facet of community life. Problems increase in number and complexity and range in importance from everyday details to crucial areas of civic planning. It is the profound conviction of General Code that this publication will contribute significantly to the efficient administration of local government. As Samuel Johnson observed, "The law is the last result of human wisdom acting upon human experience for the benefit of the public."

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PART I

**ADMINISTRATIVE
LEGISLATION**

Chapter 1

GENERAL PROVISIONS

ARTICLE I Adoption of Code

[HISTORY: Adopted by the Town Board of the Town of Pomfret as indicated in article histories. Amendments noted where applicable.]

ARTICLE I Adoption of Code

[A local law adopting the Code of the Town of Pomfret and making certain substantive changes to existing local laws of the Town is presently proposed before the Town Board. Upon final adoption, it will be included here as Article I of this chapter.]

PART II

GENERAL LEGISLATION

Chapter 250

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ARTICLE VII
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§ 250-40. Fees and reimbursable costs.

§ 250-41. Enforcement and penalties.

§ 250-39. Administration.

[HISTORY: Adopted by the Town Board of the Town of Pomfret 12-15-2004 by L.L. No. 7-2004. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 300.

ARTICLE I
General Provisions and Policy Requirements

§ 250-1. Legislative authority.

The Town Board of the Town of Pomfret has, pursuant to this section, Article 16, §§ 276, 277, 278, 279 and 280-a of the Town Law of the State of New York and by resolution dated September 2004, authorized and empowered the Planning Board to approve plats, showing lots, blocks or sites, with or without streets or highways, within the Town of Pomfret.

§ 250-2. Title.

This chapter shall be known and may be cited as the "Subdivision Regulations of the Town of Pomfret."

§ 250-3. General requirements.

- A. Whenever any major subdivision of land is proposed, before any contract is made for the sale or any offer to sell any lots in such subdivision or any part thereof is made, before any permit for the erection of a structure in such proposed subdivision shall be granted and before any subdivision plan may be filed in the Office of the Chautauqua County Clerk, the subdivider or a duly authorized agent shall apply for and secure approval of such proposed subdivision in accordance with the following procedures.
- B. The Chautauqua County Clerk's Office shall not record a plat of any subdivision within the Town unless the plat has been approved in accordance with the provisions of this chapter and contains all of the appropriate signatures.

§ 250-4. Design and review policies.

The subdivision of land shall conform with these regulations as well as with appropriate laws, rules and regulations established by all governing bodies having or claiming jurisdiction over various phases of the proposed development. It is declared to be the policy of the Planning Board to consider land subdivision to be part of a planning process that provides for the orderly, efficient and economical development of the Town and in a manner that is reasonable

and in the best interest of the community. In its consideration of an application for the subdivision of land, the Planning Board shall be guided by the following general requirements:

- A. Land must be buildable and free of hazards. The physical characteristics of the land to be subdivided shall be such that it can be used for building purposes without danger to health and safety or peril from fire, flood, erosion or other menace. Proper provision shall be made for vehicular and pedestrian access, stormwater drainage, water supply and sewage disposal as well as for other needed improvements.
- B. Important community resources and natural features should be preserved. Insofar as possible, all existing features of the landscape such as large trees, water and flood courses, historic sites and other significant community assets shall be preserved.
- C. Subdivisions shall be in conformance with all local legislative requirements.
- D. All required permits from all Town, county and state agencies shall be applied for and documented as received prior to the completion of the review by the Planning Board.

ARTICLE II Definitions

§ 250-5. Word use and definitions.

- A. The following rules of construction of language shall apply to the text of this chapter:
 - (1) All words used in the present tense include the future tense.
 - (2) All words in the plural number include the singular number and all words in the singular number include the plural number, except as to the number of permitted structures, unless the natural construction of the wording indicates otherwise.
 - (3) The word "person" includes an association, partnership or corporation.
 - (4) Unless otherwise specified, all distances shall be measured horizontally along the ground.
 - (5) The word "building" includes the word "structure."
 - (6) "Lot" includes the words "plot," "parcel," "tract" or "site."
 - (7) The word "premises" includes a lot and all buildings or structures thereon.
 - (8) To "erect," "to construct" and "to build" a building or structure each have the same meaning and also include "to excavate" for a building and "to relocate" a building by moving it from one location to another.
 - (9) "Used" shall be deemed also to include "designated, intended or arranged to be used or occupied."
 - (10) "Shall" is mandatory and discretionary; "may" is permissive.

(11) "He" shall include the feminine gender "she" as well.

B. The following words or phrases as used in the chapter are defined as follows:

CLUSTER DEVELOPMENT — A development of five acres or more where a developer may elect, after board approval, to cluster or group his development in return for the permanent creation of common areas. Overall, the density of development remains approximately the same as required by the district area requirements.

CODE ENFORCEMENT OFFICER — The Building Inspector/Code Enforcement Officer of the Town of Pomfret or other such person who may be appointed by the Town Board to enforce these subdivision regulations.

COMPREHENSIVE PLAN — A plan, approved by the Town Board pursuant to § 272-a of the Town Law (or a plan prepared by the Town Planning Board pursuant to previous sections of Town Law) which indicates the general locations recommended for various functional classes of public works, places and structures and for the general physical development of the Town and includes any unit or part of such plan separately prepared and any amendment to such plan or parts therein.

CONDITIONAL APPROVAL — Approval of a final plat subject to conditions set forth in a resolution conditionally approving such a plat by the Planning Board. Such conditional approval does not qualify a final plat for recording, nor authorize issuance of any building permits, prior to the signing of the plat by a duly authorized officer of the Planning Board and recording of the plat in the Office of the Chautauqua County Clerk.

CURB — A vertical edge along a street.

DESIGN CRITERIA AND CONSTRUCTION SPECIFICATIONS — The specifications entitled "Design Criteria and Construction Specifications" for the Town of Pomfret. These criteria and specifications are regulations which have been adopted by the Town Board and include those amendments, additions or deletions which the Town Board shall adopt from time to time by resolution.

DEVELOPMENT — Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

DRIVEWAY — A private way providing vehicular access from a public or private road to a residence or commercial establishment.

EASEMENT — The authorization by a property owner for the use by another, and for a specified purpose, of any designated part of said property.

ENGINEER or LICENSED PROFESSIONAL ENGINEER — A person licensed as a professional engineer by the State of New York.

ENVIRONMENTAL ASSESSMENT FORM — A form used to determine the environmental significance of an action, in accordance with the State Environmental Quality Review Act (SEQR) regulations.

ENVIRONMENTAL IMPACT STATEMENT — A written document, prepared in accordance with State Environmental Quality Review Act (SEQR) regulations, which documents the potential environmental impacts of proposed actions and alternative actions.

FINAL PLAT — A drawing, in final form, showing a proposed subdivision containing all information or detail required by law and by these regulations to be submitted to the Planning Board for approval and which, if approved, may be duly filed or recorded by the applicant in the Office of the Chautauqua County Clerk.

FINAL PLAT APPROVAL — The signing of a plat in final form by a duly authorized officer of the Planning Board pursuant to a Planning Board resolution granting final approval of the plat, or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the Chautauqua County Clerk.

LOT — A parcel of land occupied, or designed to be occupied by one building and the accessory buildings or uses customarily incidental to it, including such open space as are required by Chapter 300, Zoning.

LOT LINE ADJUSTMENT — A modification of lot boundaries in which a portion of one or more lots are added to an adjoining lot without increasing the total number of buildable lots.

OFFICIAL MAP — The map established by the Town Board pursuant to § 270 of the Town Law, showing existing and proposed streets, highways, parks and drainage areas.

OFFICIAL SUBMISSION DATE — The date on which application for plat approval, complete and accompanied by all required information, endorsements and fees, has been filed and acknowledged by the Planning Board.

PLANNING BOARD — The Planning Board of the Town of Pomfret.

PRELIMINARY PLAT — A drawing or drawings clearly marked "preliminary plat" showing the salient features of a proposed subdivision, as specified in Article V of these regulations, submitted to the Planning Board for the purposes of consideration prior to submission of the plat in final form and of sufficient detail to apprise the Planning Board of the layout of the proposed subdivision.

RESUBDIVISION — A change in a map of an approved or filed subdivision plat if such change affects any street layout shown on such map or area reserved thereon for public use, or any change of lot lines.

SERVICE DRIVES — Minor ways which are used primarily for vehicular service access to the back or the side of properties otherwise abutting on a street.

SIDEWALK — A paved path provided for pedestrian use and usually located along the side of a street.

SPDES — Refers to the general permit for stormwater discharges for construction activity (Article 17, Titles 7 and 8, and Article 70 of the Environmental Conservation Law), which requires public agencies to address stormwater drainage issues.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR) — Refers to the New York State law (Environmental Conservation Law § 8-0113) and regulations (6 NYCRR Part 617) which require public agencies to consider the potential environmental impacts of an action before approving or undertaking such action.

STREET — A way for vehicular traffic. A street may be designed as a road, avenue, lane, alley or other similar term.

STREET, ARTERIAL — A street, normally a state highway, which serves or is designed to serve heavy flows of traffic and which is used primarily as a route for traffic between communities and/or other heavy traffic generating areas.

STREET, COLLECTOR — A street which serves or is designed to carry traffic from minor streets to the arterial street system.

STREET, DEAD-END or CUL-DE-SAC — A street or portion of a street with only one vehicular traffic outlet.

STREET, MARGINAL ACCESS — A minor street which is parallel to and adjacent to an arterial street and which provides access to abutting properties and protection from through traffic.

STREET, MINOR (LOCAL) — A street used primarily to provide access to abutting properties.

STREET PAVEMENT — The wearing or exposed surface of the roadway used by vehicular traffic.

STREET, PRIVATE — See "service drives."

STREET WIDTH — The width of the right-of-way, measured at right angles to the center line of the street.

SUBDIVIDER — Any person, firm, corporation, partnership or association who shall lay out any subdivision or part thereof as defined herein, either for oneself or others.

SUBDIVISION — The division of any parcel of land into two or more lots, plots, sites or other division of land for the purpose, whether immediate or future, of transfer of ownership or development, including resubdivision. A lot line adjustment that does not involve creation of a new lot shall not be included in the definition of subdivision.

SUBDIVISION, MAJOR — Any subdivision not classified as a minor subdivision.

SUBDIVISION, MINOR — A subdivision of land into not more than four lots (including the parent parcel) within a thirty-six-month period, from any one parcel of land. In addition, a minor subdivision shall not involve the creation of any new streets; the extension of any street, water or sewer line; or the installation of drainage improvements through one or more lots to serve one or more lots; or the creation or

extension of water or sewer districts; or the entry into a contractual arrangement for the provision of municipal water or sewer.

SUPERINTENDENT OF HIGHWAYS — The Superintendent of Highways of the Town of Pomfret.

SURVEYOR — A person licensed as a land surveyor by the State of New York.

TERRACE — The area between the curb and sidewalk or, if no sidewalk exists, the area between the curb and the public right-of-way.

TOWN BOARD — The legislative body of the Town of Pomfret.

TOWN ENGINEER — The engineer designated to act on behalf of the Town by the Town Board.

UNDEVELOPED PLAT — A plat existing at the time of the enactment of these regulations that has been filed in the office of the Chautauqua County Clerk, where 20% or more of the lots within the plat are unimproved.

ARTICLE III Subdivision Approval Process

§ 250-6. Sketch plan approval requirements.

- A. The purpose of the sketch plan phase is to provide the subdivider with an opportunity to consult early and informally in the subdivision process with the Planning Board in order to save time and money and to improve the opportunity for more desirable development.
- B. A sketch plan may be submitted to the Planning Board for informal review for all subdivisions. The sketch plan should show the location of the major subdivision, all existing structures, wooded areas, significant physical features, existing utilities and community resources and the proposed pattern of lots, streets, drainage, open space and water and sewer facilities. Two copies of a sketch plan must be submitted to the Clerk of the Planning Board 10 days prior to the regular meeting of the Planning Board. The subdivider may then appear before the Planning Board to present the proposed sketch plan and to receive information that may be necessary to process the request.
- C. The subdivider may appear before the Planning Board to present the proposed sketch plan and to receive information that may be necessary to process the request. The subdivider may meet with the Planning Board prior to preparing the sketch plan to discuss procedural matters as well as pertinent development requirements and potential concerns, including but not limited to the design of streets, reservations of land, local development policies, drainage and erosion control and slope stabilization measures, water retention facilities, sewage, water supply and fire protection.
- D. Subdividers of land adjoining state or county highways are advised to consult with the Resident Engineer of the New York State Department of Transportation or the County Highway Department at the sketch plan stage in order to resolve problems of street openings or stormwater drainage at the earliest possible stage in the design process.

- E. Where public utilities are involved, the subdivider's engineer should contact the appropriate agencies for connection specifications and capacity requirements as well as other pertinent construction standards.
- F. The Planning Board shall determine whether the sketch plan meets the purposes of these regulations and if the proposal is consistent with existing or potential development of adjacent areas and any existing Town Comprehensive Plan. The Planning Board shall inform the applicant of the actions to be taken to meet the requirements of these regulations. The requirements for compliance with SEQR shall also be discussed at this stage. The Planning Board may, if it deems it appropriate, refer a copy of the sketch plan to the Town Engineer or any other Town official for review and report.
- G. Within 45 days following the receipt of a complete sketch plan, the Planning Board shall transmit a written report to the applicant containing any comments concerning the design of the proposed project. Copies of minutes of relevant meetings of the Planning Board shall be considered a sufficient written report. The time frame within which the Planning Board is required to act may be extended by mutual consent of the Planning Board and the applicant.

§ 250-7. Preliminary plat approval requirements.

- A. A preliminary plat shall be prepared and submitted to the Planning Board for all proposed major subdivisions and may be required for minor subdivisions. The preliminary plat shall be clearly marked "preliminary plat" and shall satisfy the requirements for preliminary layouts as described in Article V of these regulations. Preliminary plats should comply with the recommendations made by the Planning Board in its report on the sketch plan. A completed environmental assessment form shall also be required at this time.
- B. Seven copies of the preliminary plat and supplementary materials specified herein shall be submitted to the Planning Board at least 14 days prior to the meeting at which it is to be considered.
- C. The preliminary plat shall be accompanied by a fee to cover administrative and inspection costs in accordance with the fee schedule adopted by the Town Board.
- D. One copy of the preliminary plat shall be returned to the applicant with the notification of decision and one copy shall be retained by the Planning Board. The other copies shall be used for necessary coordination with other agencies or consultants.
- E. The Planning Board shall study the preliminary plat taking into consideration the topography of the area, the requirements of the community and the best use of the land proposed to be subdivided. Particular attention shall be given to the arrangement, location, and width of streets, their relation to the topography of the land, water and sewer services, drainage, lot sizes and arrangements, the future development of adjoining lands as yet unsubdivided and the requirements of Chapter 300, Zoning, and the Town's Comprehensive Plan, if any. In the review of the preliminary plat, the Planning Board shall consult with the Town Superintendent of Highways and with the Town Engineer if such consultation is needed, as well as with such other officials or agencies as may be

appropriate. The Superintendent of Highways, Town Engineer or other appropriate officials consulted with shall report to the Planning Board concerning the adequacy of the engineering features shown on the preliminary plat.

- F. Within 62 days following the receipt of a complete and satisfactory preliminary plat and supporting documentation, including a completed environmental assessment form, or notice of completion of a draft environmental impact statement, the Planning Board shall, pursuant to Town Law, conduct a public hearing on the proposed subdivision. The notice of hearing shall be advertised at least once in a newspaper of general circulation in the Town not less than five days before such hearing.
- G. Within 62 days following the public hearing, the Planning Board shall approve, with or without modification, or disapprove such preliminary plat. The grounds for modification or disapproval, if any, shall be stated upon the records of the Planning Board. Notwithstanding the foregoing provisions, the time within which the Planning Board must take action on such plat may be extended by mutual consent of the subdivider and the Planning Board. When approving a preliminary plat, the Planning Board shall state in writing any modification it deems necessary prior to submission of the plat in final form.
- H. Within five days of the decision on the preliminary plat, the Planning Board shall file its decision in the office of the Town Clerk. In addition, the subdivider shall be provided with written notification of the action by the Planning Board within five days of the decision. In the event the Planning Board fails to take action on a preliminary plat within the time frame prescribed herein, such plat shall be deemed to have been granted preliminary approval. The certificate of the Town Clerk as to the date of submission and the failure to take action within such prescribed time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval.

§ 250-8. Final plat approval requirements.

- A. Within six months of receiving approval from the Planning Board on a preliminary plat, with or without modification, the applicant may submit a final plat for approval by the Planning Board. The final plat shall be accompanied by the remainder of the subdivision fees as specified by the fee schedule adopted by the Town Board. Final plats may require further review under the State Environmental Quality Review Act (SEQR).
- B. If more than six months have elapsed between the time of the Planning Board's decision on the preliminary plat and the submission of the final plat, the Planning Board may require a resubmission of the preliminary plat prior to accepting the proposed final plat, if it determines that conditions affecting the plat have changed significantly in the interim. If the Planning Board determines that the preliminary plat shall be resubmitted, the Planning Board shall conduct another public hearing on the proposed subdivision.
- C. Two reproducible Mylar tracings plus six copies of the tracing and other exhibits required for approval, as specified herein and as described in the Town's Design Criteria and Construction Specifications, shall be submitted with the application for final plat approval. When submitting a final plat for Planning Board approval, the subdivider shall also file formal offers of dedication to the Town or other appropriate public agencies of all streets, parks, playgrounds and other permanent open spaces for community use as

well as all utilities and storm drainage facilities as shown in the final plat. The approval of the plat does not constitute acceptance by the Town of the dedication of such facilities. Evidence of all necessary easements or easement documents, if appropriate, as well as any other legal documents requested by the Planning Board, shall be submitted with the final plat.

- D. The subdivider may choose to develop the subdivision in stages. If such staging is proposed the developer shall submit the final plat for a portion of the area encompassed by the preliminary plat, provided that the proposed development stages were indicated on the preliminary plat approved by the Planning Board. A section shall include at least 25% of the total number of lots contained in the approved plat. No more than two individual sections of a subdivision shall be in process or under construction at the same time.
- E. The final plat shall conform substantially to the preliminary plat approved by the Planning Board. It shall incorporate any modifications or other features that may have been recommended by the Planning Board at the preliminary plat stage. All such compliances shall be clearly indicated by the subdivider on the submission.
- F. Within 62 days of the receipt of a complete and satisfactory final plat which the Planning Board deems to be in substantial agreement with the preliminary plat approved pursuant to this section, the Planning Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat.
- G. When a final plat is submitted which the Planning Board deems not to be in substantial agreement with the preliminary plat approved pursuant to this section, the following shall apply:
 - (1) The Planning Board shall hold a public hearing on such final plat not later than 62 days after the receipt of the final plat. The hearing shall be advertised at least once in a newspaper of a general circulation in the Town at least five days before such hearing.
 - (2) The Planning Board shall by resolution conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within 62 days after the date of the public hearing. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.
- H. Written notice of the action by the Planning Board shall be mailed to the applicant and filed in the office of the Town Clerk within five days of the date of the action by the Planning Board. The action of the Planning Board shall be recorded in the Board's minutes. In the case of the disapproval of a proposed final plat, the Planning Board minutes shall specify the reasons for disapproval. Notwithstanding the foregoing provisions of this chapter, the time within which the Planning Board must take action on such plat may be extended by mutual consent of the subdivider and the Planning Board. In the event the Planning Board fails to take action on a final plat within the time prescribed herein, the plat shall be considered to be approved. A certificate of the Town Clerk as to the date of submission and the failure to take action within such prescribed

time shall be issued on demand and shall be sufficient in lieu of written endorsement or other evidence of approval. No construction of any sort, site improvements or a building permit for any structure within the proposed subdivision shall be issued by the Code Enforcement Officer until the record sheet of the final plat has been approved by the Planning Board and the subdivision is filed in the office of the Chautauqua County Clerk and cabinet, section and map numbers have been assigned by the County Clerk.

- I. If a permit is desired for the occupancy of a building in the subdivision prior to the completion of all of the improvements shown on the approved construction sheet of the subdivision plat, the Town Superintendent of Highways and the County Health Department, as appropriate, shall determine that the streets and utilities serving the building are sufficiently completed to adequately serve the proposed occupancy. Any building permit issued without satisfaction of these requirements shall be considered to be null and void.
- J. Every final plat submitted to the Planning Board for its approval shall carry the following endorsement:

Approved by Resolution of the Planning Board of the Town of Pomfret, New York,
on the ____ day of _____, 20 ____.

Signed this ____ day of _____, 20 ____, by _____
Chairperson or _____ Designee.

- K. If the Planning Board conditionally approves the final plat, the Planning Board may authorize the Chairman, or designee, to sign the plat upon the completion of the requirements specified in the approval resolution. Within five days of granting conditional approval, the final plat shall be certified by the Chairman of the Planning Board, or designee, as conditionally approved. A copy of such action shall be filed in the office of the Town Clerk and a certified copy mailed to the subdivider, including a certified statement listing those requirements which, upon completion, would constitute approval of the final plat. Upon completion of the requirements, the plat shall be signed by the Chairman of the Planning Board or designee. Conditional approval of a final plat shall expire within 180 days following the date of the resolution granting conditional approval unless all such requirements have been certified as completed. Notwithstanding the foregoing provisions of this chapter, the Planning Board may extend the time within which a conditionally approved plat must be submitted for final approval. If the Planning Board determines that such an extension is warranted, it may extend the date for no more than two periods of 90 days each.
- L. No changes, erasures, modifications, or revisions shall be made to any final plat following approval and endorsement by the Planning Board on the plat.
- M. An approved plat shall be filed in the office of the County Clerk within 62 days following the date the plat is signed by the Chairman of the Planning Board, or designee, or the certificate of the Town Clerk as to the date of the submission of the final plat and failure of the Planning Board to take action thereon within the time prescribed is issued. If the plat is not filed within this time period, the approval shall become null and void. In the event the owner shall file only a section of such approved plat in the office of the

County Clerk, the entire approved plat shall be filed with the Town Clerk within 30 days of the filing of such section. Any section of the approved plat which is filed in the office of the County Clerk shall encompass at least 25% of the total number of lots contained in the approved plat. The approval of the remaining sections of the approved plat shall expire unless said sections are filed before the expiration of the exemption period to which such plat is entitled under the provisions of Town Law.

§ 250-9. Minor subdivision approval requirements.

- A. The Planning Board shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.
- B. Applicants for approval of minor subdivision plats are encouraged to meet with the Code Enforcement Officer to determine whether the approval process authorized by this section can and should be utilized. The Code Enforcement Officer may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of a tax map showing the land proposed to be subdivided and all lots previously subdivided from that tract of land. Applicants for approval of minor subdivisions are too required to submit a preliminary plat. The applicant shall also submit two surveys of the minor subdivision prepared by a surveyor licensed by the State of New York.
- C. The Planning Board may require a series of submittals conforming to those for major subdivisions, but may waive data requirements for good cause.
- D. In cases where the proposed minor subdivision will not pose any danger to health and safety or peril from fire, flood, erosion or other menace and where the application of these regulations will serve no substantial public interest the Planning Board may waive any or all other requirements of these regulations for any minor subdivisions, including, but not limited to, the requirement of a public hearing. The survey requirement shall not be waived.
- E. Subsequent to the adoption of these regulations, not more than three additional new lots may be created out of an existing parcel (i.e., a parcel in existence on the date that these subdivision regulations were adopted) using the minor subdivision approval process, within a thirty-six-month period.
- F. The Planning Board shall approve, deny, or conditionally approve the proposed minor subdivision final plat signature on the plat by the Chairman of the Planning Board or designee. Action by the Planning Board shall be taken within 62 days following the receipt of a complete and satisfactory application for approval of a final plat for a minor subdivision. The time period within which the Planning Board is required to act may be extended by mutual agreement of the applicant and the Planning Board. The applicant shall be notified in writing and all decisions of the Planning Board shall be filed in the office of the Town Clerk within five days. If the Planning Board fails to act within the sixty-two-day period, the subdivision shall be deemed to be approved and the Town Clerk may issue a certificate of approval on demand.

- G. If the subdivision is disapproved, the Planning Board shall furnish the applicant with a written statement specifying the reasons for disapproval.
- H. If the subdivision is conditionally approved, the Chairman of the Planning Board, or designee, may be authorized to sign the plat upon the completion of the requirements specified in the approved resolution.
- I. The construction of any improvements or the provision of guarantees for such improvements shall be in accord with the procedures and requirements specified herein for major subdivisions.
- J. This section supersedes § 276 of the Town Law, but only as it pertains to minor subdivisions, as defined and regulated herein.

§ 250-10. Resubdivision and lot line adjustments.

For a resubdivision, the same procedure shall apply as for a subdivision. A resubdivision consisting solely of the simple alteration of lot lines where no additional lots would be created shall not be considered a subdivision pursuant to these regulations. Notification of the purpose for the division (i.e., lot line adjustment) shall be shown on the plat and in the deeds. Tax numbers shall be reassigned to the new legal descriptions.

§ 250-11. Coordination with the State Environmental Quality Review Act (SEQR).

- A. Preliminary plats and final plats where no preliminary plat was required shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed. The time periods for review of a preliminary plat shall begin upon filing of such negative declaration or such notice of completion.
- B. When the Planning Board is lead agency under the State Environmental Quality Review Act (SEQR), any public hearing held by the Planning Board on a preliminary plat, on a final plat where no preliminary plat was required, or on a final plat which does not substantially conform to an approved preliminary plat shall be coordinated with the environmental review process as follows:
 - (1) If the Planning Board determines that the preparation of an environmental impact statement is not required, the Planning Board will issue a negative declaration. The public hearing on the plat shall be held within 62 days after the receipt of a complete preliminary plat; or
 - (2) If the Planning Board determines that the preparation of an environmental impact statement is required, and a public hearing on the draft environmental impact statement is held, the public hearing on the plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement. If no public hearing is held on the draft environmental impact statement, the public hearing on the plat shall be held within 62 days of filing the notice of completion.

- (3) The hearing on the plat shall be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement, or 14 days before a hearing held jointly therewith. The hearing on the plat shall be completed within 120 days after it has begun.
 - (4) If the Planning Board determines that an environmental impact statement is required, and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 62 days following the close of such public hearing. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 62 days following the close of the public hearing on the plat. Within 30 days of the filing of such final environmental impact statement the Planning Board shall issue findings on the final environmental impact statement and make its decision on the plat.¹
- C. If the Planning Board is not lead agency under the State Environmental Quality Review Act, any public hearing held by the Planning Board on a preliminary plat, on a final plat where no preliminary plat was required, or on a final plat which does not substantially conform to an approved preliminary plat shall be coordinated with the environmental review process as follows:
- (1) The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement the Planning Board shall hold the public hearing on the plat within 62 days after the receipt of a complete plat by the Clerk of the Planning Board.
 - (2) The hearing on the plat shall be advertised at least once in a newspaper of general circulation of the Town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such a manner as it deems most appropriate for full public consideration of such plat. The hearing on the final plat shall be completed within 120 days after it has begun.
 - (3) The Planning Board shall act on the plat within 62 days after the close of the public hearing on such plat.

ARTICLE IV

Improvements and/or Guarantees

§ 250-12. Required improvements.

- A. Prior to the approval of a final plat by the Planning Board, the applicant shall complete all of the improvements deemed necessary by the Planning Board to the satisfaction of the appropriate Town departments and the Planning Board.

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- B. All of the required improvements shall be made by the applicant without reimbursement by the Town. Unless alternately provided in accord with the provisions of Town Law, said improvements shall include the following, as well as those improvements listed in the Town of Pomfret Design Criteria and Construction Specifications:
- (1) Streets.
 - (2) Street signs.
 - (3) Curbing and gutters.
 - (4) Terrace strips.
 - (5) Sidewalks.
 - (6) Street shade trees.
 - (7) Monuments.
 - (8) Storm drainage.
 - (9) Sanitary sewers or an approved alternate system.
 - (10) Water distribution lines and hydrants.
 - (11) Park and recreation facilities.
 - (12) Electrical, gas, telephone, television cable and utility lines.
 - (13) Plantings and ground cover.
 - (14) Driveway aprons.
- C. The subdivider shall complete all the required improvements to the satisfaction of the Town Superintendent of Highways and/or Town Engineer, who shall file a letter with the Planning Board signifying the satisfactory completion of all improvements required by the Planning Board.
- D. The required improvements shall not be considered to be completed until the installation of the improvements has been approved by the Town Superintendent of Highways or Town Engineer, and/or the Chautauqua County Health Department and a map satisfactory to the Planning Board has been submitted indicating the location of monuments marking all underground utilities as actually installed. Said map shall be submitted prior to the endorsement of the plat by the Chairman of the Planning Board or designee.
- E. The Planning Board may waive, when reasonable, any required improvements. Any such waiver, which shall be subject to appropriate conditions, may be exercised in the event that any such requirements or improvements are found not to be requisite in the interest of the public health, safety, and general welfare or inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

§ 250-13. Performance bond or security.

- A. Furnishing of performance bond or other security. As an alternative to the installation of infrastructure and improvements, as above provided, prior to Planning Board approval, a performance bond or other security sufficient to cover the full cost of the same, as estimated by the Planning Board or the Superintendent of Highways, where such departmental estimate is deemed acceptable by the Planning Board, shall be furnished to the Town by the owner.
- B. Security where plat approved in sections. In the event that the owner shall be authorized to file the approved plat in sections, as provided in Town Law § 277, Subdivision 9, and in § 250-8 of these regulations, approval of the plat may be granted upon the installation of the required improvements in the section of the plat filed in the office of the County Clerk or the furnishing of security covering the costs of such improvements. The owner shall not be permitted to begin construction of buildings in any other section until such section has been filed in the office of the County Clerk and the required improvements have been installed in such section or a security covering the cost of such improvements is provided.
- C. Form of security. Any such security must be provided pursuant to a written security agreement with the Town, approved by the Town Board and also approved by the Town Attorney as to form, sufficiency and manner of execution, and shall be limited to:
- (1) A performance bond issued by a bonding or surety company;
 - (2) The deposit of funds in or a certificate of deposit issued by a bank or trust company located and authorized to do business in this state;
 - (3) An irrevocable letter of credit from a bank located and authorized to do business in this state;
 - (4) Obligations of the United States of America; or
 - (5) Any obligations fully guaranteed as to interest and principal by the United States of America, having a market value at least equal to the full cost of such improvements. If not delivered to the Town, such security shall be held in a Town account at a bank or trust company.
- D. Term of security agreement. Any such performance bond or security agreement shall run for a term to be fixed by the Planning Board, but in no case for a longer term than three years; provided, however, that the term of such performance bond or security agreement may be extended by the Planning Board with consent of the parties thereto. If the Planning Board shall decide at any time during the term of the performance bond or security agreement that the extent of building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such security, or that the required improvements have been installed as provided in this section and by the Planning Board in sufficient amount to warrant reduction in the amount of said security, and upon approval by the Town Board, the Planning Board may modify its requirements for any or all such improvements, and the amount of such security shall thereupon be reduced by an appropriate amount so that the new amount will cover the cost in full of the amended list of improvements required by the Planning Board.

- E. Default of security agreement. In the event that any required improvements have not been installed as provided in this section within the terms of such security agreement, the Town Board may thereupon declare the said performance bond or security agreement to be in default and collect the sum remaining payable thereunder; and upon the receipt of the proceeds thereof, the Town shall install such improvements as are covered by such security and as commensurate with the extent of building development that has taken place in the subdivision but not exceeding in cost the amount of such proceeds.

§ 250-14. Construction of improvements.

- A. The Town shall appoint an inspector to act as agent of the Planning Board for the purpose of assuring the satisfactory completion of all improvements required by the Planning Board. The costs of such inspection shall be determined based on a fee schedule adopted by resolution of the Town Board. The applicant shall pay the Town for the costs of inspection before the final plat is signed for filing. If the Planning Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with Planning Board's recommendations or the approved construction detail sheets, the applicant shall be liable for the costs of completing said improvements according to the approved specifications. No plat shall be approved by the Planning Board as long as the subdivider is in default on a previously approved plat. No certificate of occupancy shall be issued for any lots for which the subdivider is deemed to be in default.
- B. If at any time before or during the construction of the required improvements it is demonstrated, to the satisfaction of the Town Superintendent of Highways and/or Town Engineer, that unforeseen conditions make it necessary or preferable to modify the location or design of such required improvements, the Town Superintendent of Highways and/or Town Engineer may, upon approval by a previously designated member of the Planning Board, authorize such modifications; provided that such modifications are within the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Superintendent of Highways and/or the Town Engineer shall issue any such authorization in writing and shall transmit a copy of such authorization under this section to the Planning Board at their next regularly scheduled meeting. The final plat construction sheets shall be modified to reflect the changes authorized by this section and made part of the subdivision file.
- C. At least five days prior to commencing the construction of the required improvements, the subdivider shall notify the Superintendent of Highways and/or Town Engineer in writing of the time when the construction of such improvements is to begin. This will enable the Town Board to have inspection services on site to assure that all Town specifications and requirements are met during the construction of required improvements and to assure that the improvements required by the Planning Board are satisfactorily completed.

§ 250-15. Reservation of parkland.

- A. Before the Planning Board may approve a subdivision containing residential units, the final plat shall also show, when required by the Planning Board, a park or parks suitably located for playground or other recreational purposes.
- B. Land for park, playground or other recreational purposes may not be required until the Planning Board has made a finding that a proper case exists for requiring that a park or parks are suitably located for playgrounds or other recreational purposes within the Town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the Town based on projected growth to which the particular final plat will contribute. The Planning Board shall base its requirement on accepted standards for community recreational facilities and parks.
- C. In the event the Planning Board makes a finding pursuant to Subsection B of this section that the proposed plat presents case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located within such plat, the Planning Board may require a sum of money in lieu thereof, in an amount to be established by the Town Board. In making such determination of suitability, the Planning Board shall assess the size and suitability of land shown on the plat which could be possible locations for park or recreational facilities, as well as practical factors, including whether there is a need for additional facilities in the immediate neighborhood. Any money required by the Planning Board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the Town exclusively for park, playground or other recreational purposes, including the acquisition of property.

ARTICLE V**Specifications for Layouts and Plats****§ 250-16. Specifications for sketch plans.**

A sketch plan shall be drawn on paper or other suitable material at a scale of not more than 100 feet to one inch. Sketch plans shall include the following information.

- A. Name of proposal, including name and address of the subdivider(s) and a written, clear statement of the subdivider's intent and letter of disclosure.
- B. North point, graphic scale, date, and general location map.
- C. If the subdivider intends to develop the tract in stages, the entire tract shall be depicted on the sketch plan with anticipated stages and timing of development indicated. All other lands contiguous to the proposal owned by the subdivider shall be shown on the map with the approximate acreage.
- D. Names of owners of adjacent lands or names of adjacent subdivisions.
- E. A location map showing the boundaries of the tract in relation to adjoining streets and the locations of the nearest utility services.

- F. General topography and drainage patterns of the parcel to be subdivided and parcels within 200 feet of the tract to be subdivided. All pertinent topographic features within the site and adjoining tracts, including existing buildings, watercourses, water bodies, wetlands and wooded areas, should be shown. Features to be retained as well as those to be removed should be indicated.
- G. A statement as to the proposed source of water supply and method of sewage disposal. (If the subdivision is not to be served by a public sewer system the subdivider is encouraged to contact the Chautauqua County Health Department for assistance in conducting on-site percolation tests in order to get a general idea of potential subsurface problems.)
- H. The approximate lines of proposed streets and lots as well as lands identified for recreation areas or other permanent open spaces.
- I. A general statement as to how stormwater drainage is to be accommodated.
- J. An indication of existing zoning of the tract (both on and adjacent to the site) and any other legal restrictions of use.
- K. A statement as to the consistency of the proposal to any existing Town Comprehensive Plan.
- L. The general soil conditions of the entire site proposed for subdivision and its location with respect to a floodway or the boundaries of any areas of special flood hazard (one-hundred-year floodplain).
- M. Locations of any natural gas wells on the site.

§ 250-17. Specifications for preliminary plats.

The preliminary plat shall be drawn on one or more sheets of tracing material and shall be clearly marked as "preliminary plat." The preliminary plat shall be drawn at a scale of not more than 100 feet to the inch. If more than one sheet is required to show an entire tract, an index map shall be provided. Proof of ownership shall be submitted at this time. When the subdivider is someone other than the owner, an affidavit by the owner of the land consenting to the application shall be filed. The plat shall include the following information:

- A. Subsections A through E of § 250-16.
- B. Existing streets immediately adjoining and within the tract to be subdivided and the distance to the nearest major street intersection.
- C. A topographic map showing the entire site and all lands within 100 feet of the property at a five-foot interval. When additional information is needed to review the subdivision, the Planning Board may require a topographic map showing all lands within 200 feet of the property boundary.
- D. Existing drains, water lines and sanitary sewers within the tract to be subdivided and adjacent thereto. Such facilities should be identified by location, size, type and

approximate elevations and gradients, using mean sea level as datum plan. Existing as well as proposed easements for such facilities should also be shown.

- E. The proposed source of water supply and method of sewage disposal. A conceptual layout of each system should be delineated, including the location of hydrants and the sizing of lines to be installed. Where water mains are not looped, hydrants shall be provided. If waste disposal is to be provided on-site, the subdivider shall provide the results of percolation tests in the approximate locations where proposed disposal systems are to be located.
- F. A tracing overlay showing all soils and their classification. Areas with moderate to high susceptibility to erosion, if any, shall be highlighted. The subdivider shall also include information about existing on-site vegetation.
- G. A separate drainage report, including calculations for runoff and pipe and channel sizing, which clearly describes how runoff will be handled during grading and development. The use of erosion and sedimentation prevention measures should be described. The report shall provide sufficient details to comply with the requirements for stormwater management plans administered by the New York State Department of Environmental Conservation and shall include the preliminary design of bridges and culverts. The design of stormwater retention facilities shall be as specified in the Design Criteria and Construction Specifications. Design of bridges and culverts must conform to the requirements of the appropriate jurisdiction (Town Superintendent of Highways, State Department of Transportation or County Department of Public Facilities).
- H. The approximate lines and gradients of proposed streets and sidewalks and the names of proposed streets.
- I. A preliminary grading plan of the site at a contour interval of two feet, showing the locations and approximate sizes of cuts and fills and cross sections for any final grading steeper than three horizontal to one vertical, or where the cut or fill will be more than five feet.
- J. The approximate lines of proposed lots, the acreage or square footage contained in each lot, and individual lot numbering. If a proposed lot contains one or more existing buildings, the proposed yard dimensions for such buildings shall be noted.
- K. The locations and dimensions of areas proposed for permanent open space.
- L. The location of any municipal boundary lines and zoning district lines within the tract.
- M. Any nonconforming lots, showing the required and actual areas, yards and setbacks.
- N. Copies of any deed restrictions or covenants as they may apply to any or all parts of the subdivision.
- O. Location, type and ownership of any natural gas wells within the site.
- P. The location and type of any known potentially hazardous materials on or adjacent to the site.
- Q. The location and quality of water bodies directly affected by and adjacent to the site.

- R. An indication of any federal, state or county permits that may be required.
- S. The locations of any buffers to be provided, either during or after the completion of construction.
- T. The location, size and type of proposed outdoor lighting and/or the creation of lighting districts.
- U. Facilities for fire protection.
- V. Facilities for vehicular and pedestrian traffic, circulation and parking.

§ 250-18. Specifications for final subdivision plats.

The final plat shall be drawn in ink on Mylar or material equally acceptable for filing by the Chautauqua County Clerk. Said plat shall contain sufficient survey data to readily determine the location, bearing and length of all lines shown thereon and to permit the reproduction of such lines upon the ground. The final plat submission shall be composed of three parts, namely, construction sheet, record sheet and drainage report, as described in the subsections that follow. Two Mylar copies shall be submitted to the Town Planning Board. One approved copy will be retained by the Town; the other will be filed with the County Clerk.

- A. Final plat construction sheet. The construction sheet shall not be larger than 34 inches by 44 inches in size, nor smaller than 18 inches by 24 inches. It shall be drawn at a scale of 50 feet to one inch and shall contain the information listed below. Where more than one sheet is required to depict the entire subdivision, a key sheet shall be provided. All data shown on the construction sheet shall be in accordance with the requirements of the Town Engineer and/or Superintendent of Highways and the Town's construction specifications and shall include:
 - (1) Subsections A through C of § 250-16.
 - (2) The lines of existing and proposed streets and sidewalks immediately adjoining and within the subdivision.
 - (3) The names of existing and proposed streets.
 - (4) Typical cross sections of proposed streets.
 - (5) Profiles of proposed streets at suitable vertical scale showing finished grades in relation to the existing ground elevation.
 - (6) The layout of proposed lots, including lot numbers.
 - (7) Provisions for water supply and sewage disposal, and, if applicable, evidence that such provisions have received approval of the Chautauqua County Department of Health.
 - (8) The location and size of existing and proposed stormwater pipes, sanitary sewer lines and water mains on the property or into which any connection is proposed.

- (9) Locations of survey monuments. Prior to the acceptance of the dedication of new streets, a certificate by a licensed land surveyor must be filed certifying that the above monuments have been placed where indicated on the map, at the appropriate state of construction as determined by the Town Superintendent of Highways and/or Town Engineer.
 - (10) Plans and typical cross sections of proposed sidewalks.
 - (11) Plans for any proposed neighborhood park or playground within the subdivision, including landscaping.
 - (12) A planting plan for street trees where required indicating the location, varieties and minimum size of trees to be planted and of existing trees to be preserved as street trees.
 - (13) Brief specifications, or reference to Town standards, for all facilities to be constructed or installed within the subdivision.
 - (14) Specifications for all bridges and culverts, and approvals from the appropriate jurisdiction (e.g., NYS Department of Transportation, County Department of Public Facilities, Town of Pomfret, etc.) if needed.
 - (15) Locations of any natural gas wells within the site.
 - (16) Certification by a licensed professional engineer or a licensed land surveyor as evidence of professional responsibility for the preparation of the construction sheet.
- B. Final plat record map. Unless the Chautauqua County Clerk specifies otherwise, the record sheet shall be no larger than 24 inches by 36 inches in size, and shall be drawn on Mylar or linen at a scale not greater than 50 feet to one inch and shall show the information listed below. Where more than one sheet is required to show the entire subdivision, an index map drawn to scale showing all sections shall be provided. The final plat record map shall include:
- (1) Subsections A and B of § 250-16.
 - (2) The boundaries of the subdivision and information to show the location of the subdivision in relation to surrounding properties and streets, including the names of owners of adjacent lands or the names of adjacent subdivisions. Whenever practicable, the subdivision boundary shall be referenced from two directions to establish U.S. Coast and Geodetic Survey monuments or New York State Plane Coordinate monuments. In the event that such monuments have been obliterated or are otherwise unavailable, the subdivision boundary shall be referenced to the nearest highway intersections or previously established monuments of subdivisions or public lands. Any combination of types of reference points maybe accepted that would fulfill the requirements of exact measurements from the subdivision boundary to reference points previously established for or by a public agency.
 - (3) The lines of existing and proposed streets and sidewalks within the subdivision and their interconnection with existing or proposed streets and sidewalks on adjoining properties.

- (4) The lines and dimensions of proposed lots, which shall be numbered. If a proposed lot contains one or more existing buildings, the yard dimensions for such buildings shall be indicated. Existing buildings outside the limits of the plat but within 75 feet of any proposed street or 30 feet of any proposed lot line shall also be shown.
 - (5) The lines and purposes of existing and proposed easements immediately adjoining and within the subdivision.
 - (6) The lines, dimensions and area in square feet of all property proposed to be reserved by deed restriction or covenant for the common use of property owners of the subdivision or for any other reason.
 - (7) The location of monuments to be placed within the subdivision.
 - (8) The locations of existing and proposed water supply lines, storm sewers, and sanitary sewers within the subdivision.
 - (9) The locations of any municipal boundary lines within the subdivision.
 - (10) The seal and certification by a licensed land surveyor as evidence of professional responsibility for the preparation of the record map and a place for the cabinet, section, and map numbers (or liber and page numbers) when filed.
 - (11) Offers of dedication to the Town of any open space, recreation, street or other improvements and those facilities to be retained by the subdivider, including the method of maintenance and improvement thereof. Such offers shall be received and approved by the Town Attorney as to their legal sufficiency.
- C. Subdivision drainage plan and erosion control plan. This plan shall be on a separate sheet of the same size and scale as the record map and shall contain the following information:
- (1) Plans, profiles and typical and special cross sections of proposed stormwater drainage facilities.
 - (2) Supporting final design data and copies of computations used as the basis for the design capacities and performance of the drainage facilities.
 - (3) Subdivision grading plan developed to suitable contour interval, with grading details to indicate proposed street grades and building site grades and elevations through the subdivision. The contour interval of the grading plan shall either be one, two or five feet (vertical). The interval selected shall result in a horizontal distance between contour lines of not more than 100 feet. All grades shall be referenced to United States Coast and Geodetic Survey datum.
 - (4) A stormwater management plan shall be prepared in conformance with the DEC publication "Reducing Impacts of Stormwater Runoff from New Development," including all subsequent amendments and other provisions of the NYS Department of Environmental Conservation. Such plan shall be available on-site at all times during construction.

- (5) If the subdivision is within or adjacent to the boundary of a one-hundred-year floodplain, the subdivision drainage plan shall contain a detailed analysis of the area with respect to floodplain management and land use.
- (6) Location of all buildings proposed, if known.
- (7) Number of each lot.
- (8) Location and means of controlling erosion within the project limits.
- (9) Slope stabilization details.
- (10) Stormwater detention basins.

ARTICLE VI Design Standards

§ 250-19. General.

The Planning Board, in reviewing an application for approval, shall be guided by the considerations and standards presented in this article. The Planning Board shall take into consideration the prospective character of the development and require that improvements be designed to insure the reasonable protection of the public health, safety, morals and general welfare. In addition, all designs and improvements shall be in accordance with the Town's Design Criteria and Construction Specifications.

- A. Land to be subdivided or developed shall be of such character that it can be used safely for building purposes without danger to health, or peril from fire, flood or other menace.
- B. Proper provisions shall be made for drainage, water supply, sewage and other needed improvements.
- C. All proposed lots shall be so laid out and of such size as to be in harmony with the development pattern of neighboring properties.
- D. Cluster development. Pursuant to NYS Town Law § 278, the Planning Board may modify lot size and setback requirements of Chapter 300, Zoning, in order to approve a cluster development, if the Planning Board finds that a cluster development would provide the most appropriate use of land, would facilitate the adequate and economical provisions of streets and utilities, would preserve the natural scenic qualities of open lands, and/or would protect adjoining neighborhoods from the potential impact of new development. A cluster development shall not contain a greater number of dwelling units or building lots than would, in the Planning Board's judgment, be permitted if the site were subdivided into lots containing the minimum lot size and density requirements of Chapter 300, Zoning, pertaining to the district in which such site is located, and conforming to all other applicable requirements.
- E. A safe and convenient street system, consistent with the Town's Comprehensive Plan and conforming to the Official Map, if such exists, shall be created. Streets shall be of such width, grade and location so as to accommodate the type and volume of traffic that is

anticipated, to facilitate fire protection and to provide fire fighting equipment with access to buildings.

- F. Provisions shall be made to reserve open spaces for parks and playgrounds, or to require recreation fees in lieu thereof, in order to achieve the goals and objectives on the Town's Comprehensive Plan and Official Map, if such exists.
- G. Insofar as possible, all existing features of the landscape such as large trees, rock outcrops, water sources, historic resources and other significant assets that would add to the value of the site should be preserved in the subdivision design.
- H. The location and installation of sewer, water, gas, electric, streetlighting and other public facilities shall be coordinated so that they may be operated and maintained at minimum cost.

§ 250-20. Lots and blocks.

A. Lot size and arrangement.

- (1) The dimensions and arrangements of lots shall be such that there will be no foreseeable difficulties, for reasons of topography, reservations, dedications or other conditions, in providing access to buildings on such lots or in securing building permits in compliance with existing zoning regulations as well as other Town requirements.
- (2) The lot size, width, depth, shape, orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated.
- (3) Subdivision lots should be laid out as much as possible so that side or rear lot lines follow the center lines of streams or drainageways that may lie within the subdivision.
- (4) Except as may be authorized by the Planning Board under the cluster development provisions of § 250-19, all lots shown on the subdivision plat shall conform to the minimum requirements of Chapter 300, Zoning, as to area and dimensions for the zone in which the subdivision is located.
- (5) Notwithstanding any provision of law to the contrary, and except as may be authorized by the Planning Board under the cluster development provision, where a plat contains one or more lots which do not comply with Chapter 300, Zoning, application may be made to the Zoning Board of Appeals for an area variance pursuant to Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations. In reviewing such application, the Zoning Board of Appeals shall request the Planning Board to provide a written recommendation concerning the proposed variance.
- (6) Corner lots shall have extra width sufficient to comply with required building setback lines on both streets as required by Chapter 300, Zoning.

- (7) Where existing streets have been proposed for future widening, all building setbacks shall be measured from the proposed right-of-way line.
- (8) Side lines of lots shall generally be at right angles to straight streets and radial to curved streets.
- (9) Block lengths and widths shall be appropriate to accommodate the size of lots required by Chapter 300, Zoning, and to provide for convenient access, circulation control and traffic safety.
- (10) Blocks intended for commercial or industrial use shall be designed specifically for such purposes, with adequate space set aside for off-street parking and delivery facilities.
- (11) Double frontage lots (which have access to two parallel streets) will not, in general, be approved.

B. Access.

- (1) Each lot shall have access to a street built to the Town's specifications.
- (2) Where lots abut an existing state highway, either a system of marginal access streets or a reverse frontage approach shall be used in order to minimize the number of driveways and/or streets entering onto these state highways.
- (3) Where the marginal access technique is employed, a nonaccess easement shall be required along the rear portion of the lot next to and parallel to the highway right-of-way line.
- (4) Where a watercourse separates the buildable area of a lot from the street which provides access to the lot, provision shall be made for the installation of a culvert or other drainage structure. Said culvert or drainage structure shall be subject to the same design criteria and review as all other stormwater drainage facilities in the subdivision.

§ 250-21. Streets.

A. Design and layout of streets.

- (1) The design of the street pattern shall be based upon a local residential or minor street pattern connected to a residential collector street system. The street pattern shall be compatible with the existing character of the rural area where the streets are to be located and should interconnect in a clear, direct and understandable pattern. The arrangement of the streets shall not result in undue hardship to the adjoining properties.
- (2) The arrangement of streets in a new subdivision shall provide for the continuation of existing streets in adjoining areas, and shall reserve space for future street extensions where the adjoining land has not been developed. Where, in the opinion of the Planning Board, topographic or other conditions make such a continuance undesirable or impracticable, the above conditions may be modified.

- (3) Local residential streets shall be designed so as to discourage through traffic.
- (4) All right-of-way street widths and street pavements shall be measured at right angles or radial to the center line of the street.
- (5) Local (minor) streets shall have a right-of-way of at least 50 feet in width and a pavement width of not less than 24 feet plus curbing (20 feet plus two-foot graded shoulders if approved by the Planning Board and Town Highway Superintendent) unless hereinafter otherwise provided.
- (6) Streets classified as collector streets by the Planning Board shall have a right-of-way of at least 66 feet in width and a pavement width of not less than 36 feet plus curbing.
- (7) The minimum radius of horizontal curves, minimum length of vertical curves and minimum length of tangents between reverse curves shall be in accordance with specifications established by the Town Superintendent of Highways and/or Town Engineer. Such design features shall be reviewed by the Town Superintendent of Highways and/or Town Engineer, who shall report his recommendation to the Planning Board prior to final approval.
- (8) Street grades, wherever feasible, shall not exceed 8%, with due allowance for reasonable vertical curves and with not less than 200 feet between changes of grade.
- (9) In order to facilitate drainage, no street grade shall be less than 1%.

B. Construction of streets.

- (1) All streets shall be of asphalt pavement and meet all requirements specified in the Design Criteria and Construction Specifications approved by the Town Board.
- (2) Concrete or granite curbing or concrete gutters shall be installed along all new streets.
- (3) Due to the general soil conditions within the Town and normal construction sequences for development, it is deemed to be in the best interests of the Town that the following procedures be followed:
 - (a) Binder material shall not be placed prior to the completion and approval of all underground utilities, including the private utility services, and a review of the road base by the Town.
 - (b) The weather and seasonal limitations as specified under the Standard Specifications of New York State Department of Transportation shall apply for placing of bituminous mixtures.

Restrictions B(3)(a) and (b) imply completion of all underground systems well in advance of the developer's schedule for paving.

- (c) Certificates of occupancy shall not be issued unless a proper road surface as herein specified has been constructed.
- (d) Prior to installing the top course, the developer shall substantially complete the related construction in the developed area. Appropriate steps shall be taken to limit the accumulation of stormwater on the roadway. This will help to insure that the area will receive a new pavement top that is less susceptible to marring or patching as a result of normal construction activity.
 - [1] Unless a specific waiver is obtained in writing from the Town's Superintendent of Highways and/or Town Engineer, the final top course shall be installed by the developer before the end of the construction season during which the binder course was placed.
 - [2] Before the expiration of the maintenance bond and before the final top is applied, the Town and the developer will hold a final site review to assess any damages or repairs that will be completed by the developer under the maintenance agreement. Once the top course has been installed, final acceptance of all roadway improvements shall be obtained from the Town Board.
- (4) Driveway culverts.
 - (a) The installation of driveway culverts requires approval and a permit for culvert location, size and material from the state, county or Town Highway Department having jurisdiction over a given road. New driveway culvert installation shall be the responsibility of the developer/landowner following the receipt of a permit.
 - (b) The Town reserves the right to remove and/or install driveway or roadway culverts along any existing road to properly transmit surface drainage as determined by the Town Engineer and the Superintendent of Highways.

C. Street intersections.

- (1) No intersection of two streets shall be within 200 feet of any other intersection.
- (2) Streets shall not curve or turn significantly within 100 feet of an intersection.
- (3) Whenever possible, streets should intersect at right angles. Streets should not intersect at angles of less than 75°.
- (4) Multiple intersections involving the junction of more than two streets shall not be permitted.
- (5) Local residential streets and residential collector streets shall not intersect with state highways less than 800 feet apart, measured from center line to center line.
- (6) The minimum distance between center line offsets at street jogs shall be 125 feet.
- (7) Property lines at street intersections shall be rounded with a radius of 10 feet; or with a greater radius if deemed necessary by the Planning Board.

- (8) Curb radii at intersections shall be not less than 25 feet.
- D. Access to adjacent parcels and subdivisions. All proposed subdivisions shall be designed to provide access to adjacent properties. When a proposed subdivision abuts an existing subdivision, the subdivider shall make every attempt to design the street system of the proposed subdivision to connect with dead-end or stub streets of existing subdivisions.
- E. Cul-de-sac and dead-end streets.
- (1) If possible all cul-de-sac streets should drain toward their entrance.
 - (2) Unless there is the expectation of extending the street through to the adjoining property, a cul-de-sac street should never be brought to the property boundary line, but should be placed so that lots can back onto the property line of the subdivision.
 - (3) No cul-de-sac shall exceed 400 feet in length.
 - (4) All cul-de-sac streets shall have a turnaround at the end of the street with a right-of-way diameter of not less than 120 feet; the outer curb at the turn shall have a minimum diameter of 97 feet, a twenty-four-foot pavement width plus curbing.
 - (5) If a dead-end street is of a temporary nature, a similar turnaround shall be provided and provisions made for the future extension of the street through to the adjacent property and reversion of the excess right-of-way to the adjoining properties.
- F. Where a subdivision abuts or contains an existing street of inadequate right-of-way width, additional right-of-way width shall be required.
- G. No street shall have a name that will duplicate, or so nearly duplicate as to be confused with, the names of existing streets. The continuation of an existing street shall have the same name. Street names shall be approved by the Town Board.
- H. Where a subdivision abuts or contains an existing or proposed arterial street, the Planning Board may require special treatment of the land areas bordering such street in order to protect residential properties and to effectively separate through and local traffic.
- I. Where a subdivision borders on or contains a railroad right-of-way, the Planning Board may require a street or streets parallel to such right-of-way in order to make appropriate use of the land adjacent to such right-of-way.

§ 250-22. Service drives.

- A. Service drives may be permitted in business, commercial and industrial districts, although it is recommended that other definite and assured provisions be made for service access, such as off-street loading, unloading and parking that is adequate to serve the proposed use.
- B. The width of a service drive, if proposed, shall not be less than 20 feet.

- C. Dead-end service drives shall generally not be allowed. However, if such is unavoidable, such service drives shall be provided with adequate turnaround facilities at the closed end, as required by the Planning Board.

§ 250-23. Sidewalks.

Concrete sidewalks shall be installed along both sides of all new streets. Sidewalks shall be at least five feet in width, and will be maintained by the property owner.

§ 250-24. Prevention of landlocked parcels.

No division of land shall result in any parcel not having at least one access point to at least one street that can be improved to meet Town standards. Where the remainder of a parcel is located so that access to a public street would be gained by a street extending from the main portion of the parcel, there shall be enough land remaining to provide for the extension of a public (or private) street from this parcel to an existing street.

§ 250-25. Buffers and berms.

- A. If a residential subdivision abuts an arterial street, adjacent lots shall front on a residential access street and a landscaped buffer area shall be provided along the property line adjoining the highway. The buffer strip shall be a minimum of 25 feet in width and shall include both trees and shrubs. The Planning Board may require buffers in other areas, along with berms, to reduce noise levels and undesirable vistas.
- B. Design. The arrangement of plantings in buffers shall provide maximum protection to adjacent properties and avoid damage to existing plant material. Possible arrangements include planting in parallel, serpentine, or broken rows. If planted berms are used, the minimum top width shall be four feet, and the maximum side slope shall be 2:1.
- C. Planting specifications. Plant materials shall be sufficiently large and planted in such a fashion that a year-round screen at least eight feet in height shall be produced within three growing seasons. All plantings shall be installed according to accepted horticultural standards.
- D. Maintenance. Plantings shall be watered regularly and in a manner appropriate for the specific plant species through the first growing season. Dead and dying plants shall be replaced by the subdivider during the next planting season. No buildings, structures, storage of materials, or parking shall be permitted within the buffer area; buffer areas shall be maintained and kept free of all debris, rubbish, weeds and tall grass.

§ 250-26. Provisions for future resubdivision.

If a tract is subdivided into lots which are more than twice the size of the minimum lot size required in the zone district in which the subdivision is located, the Planning Board may require that streets and lots are laid out so as to permit future resubdivision in accordance with the requirements contained in these regulations and Chapter 300, Zoning.

§ 250-27. Nonresidential subdivisions.

Standards for the design and construction of nonresidential subdivisions shall be governed by sound engineering and planning practice. Utilities shall be sized commensurate with the anticipated demand based upon the full development of the subdivision.

§ 250-28. Self-imposed restrictions.

The owner of any property may impose greater restrictions on any development than those required by Chapter 250, Subdivision of Land, and Chapter 300, Zoning. Such restrictions, if any, shall be indicated on the preliminary and final subdivision plats.

§ 250-29. Easements.

- A. An easement shall be provided for all natural drainageways and all utility lines in those instances where such utility lines do not fall within a dedicated right-of-way. All easements shall be plotted on the preliminary plat and subdivision plat. A clause shall be inserted in the deed of each lot affected by an easement indicating the existence and purpose of the easement.
- B. Where a subdivision is traversed by a drainageway, channel or stream, a drainageway easement, conforming substantially with the lines of such watercourse, shall be provided. The easement shall be of such width as will be adequate to preserve natural drainage and provide sufficient width for maintenance.
- C. To the fullest extent possible, easements shall be centered on or adjacent to rear or side lot lines.

§ 250-30. Erosion and sediment control.**A. General.**

- (1) It is the Town's intent to control soil movement by employing effective erosion and sediment control measures before, during and after site disturbance.
- (2) Erosion and sediment control measures, both temporary and permanent, shall be designed and presented for approval to the Planning Board prior to any site development or soil disturbance.
- (3) The Planning Board and its designated representatives will evaluate submitted erosion and sediment control design plans against the most current edition of "New York Guidelines for Urban Erosion and Sediment Control" manual as prepared by the USDA Natural Resources Conservation Service.²

B. Vegetative controls.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) To attain the Town's goals, vegetative measures should be used in a site design to control surface water runoff, stabilize soil, and entrap soil sediments generated from erosion.
 - (a) Site slopes shall be graded to be stable and provide control of any surface or subsurface water prior to vegetative plantings.
 - (b) Site disturbance, especially in sensitive areas, shall be kept at a minimum. Designs shall limit the removal of existing trees, hedge rows and indigenous plant cover.
 - (c) The developer shall take whatever action is necessary to establish a stabilized vigorous stand of vegetative cover on all disturbed site soils as soon as possible following initial soil movement.
 - (2) If phasing is necessary to meet these conditions, the developer shall present this information as part of the development plans presented for Town review.
- C. Structural controls. Some projects may require erosion and sediment controls that will be permanent in nature. If these measures are determined to be necessary, the Town may require them to be fully functional before upland site disturbance begins. Such structures may include but are not limited to such features as siltation traps, ponds, diversion swales or dikes.
- D. Maintenance measures. It is imperative that both the vegetative and structural components be inspected periodically and maintained for optimum erosion and sediment control. Facilities must be cleaned, repaired and/or replaced as necessary in order to meet the original design criteria established in the project approval.
- (1) Dedicatable projects. If the project under consideration involves the dedication of constructed facilities to the Town, the developer shall be required to include sufficient funds in the maintenance bond to cover the projected cost of maintaining such facilities for a two-year period.
 - (2) Private projects. If a project includes facilities which are not to be dedicatable to the Town, the developer is responsible to make sure that erosion control facilities are constructed and properly maintained. Final acceptance of the erosion control facilities is necessary for the Town to issue a certificate of occupancy.
- E. Penalty. The Town is empowered to assess reasonable penalties to a developer/site owner for failure to properly construct, operate and maintain an approved soil erosion and sedimentation control plan. The penalties shall be as follows:
- (1) The developer/site owner shall be charged for the Town's costs for, but not limited to, cleaning ditches, swales, drains or streams required due to the failure of the developer to properly construct, operate and maintain site erosion and sedimentation control devices.
 - (2) No further reviews of such project shall be conducted by the Town until all payments for the Town charges have been satisfied and/or satisfactory completion

of the required erosion and sediment control measures has occurred by the developer/site owner.

§ 250-31. Storm and surface drainage.

All storm sewers and drainage facilities such as gutters, catch basins, bridges, culverts and swales for the development shall be designed in accordance with SPDES, and be subject to the approval of the Town. Such facilities shall be capable of handling upland flows that may be generated from future land development. The following points should be considered in the design of storm drainage facilities:

- A. Lots shall be laid out and graded to provide positive drainage away from buildings.
- B. Storm sewers, culverts and related installations shall be provided to:
 - (1) Permit unimpeded flow of natural watercourses;
 - (2) Insure adequate drainage of all low points; and
 - (3) Intercept stormwater runoff along streets at intervals reasonably related to the extent and grade on the area drained.
- C. Discharge of sump pumps or roof leaders directly to roadside gutters or channels shall not be permitted.
- D. The stormwater management system shall be designed to prevent increased runoff over adjacent properties.
- E. The Town shall require the completed construction and the design engineer's certification of all surface drainage improvements and erosion control measures before any building permits are issued for proposed subdivisions.
- F. Open ditches will not be permitted.

§ 250-32. Sewage disposal systems.

- A. If public sewer line is within 100 feet of the property line for a property for a single- or two-family home, or within 500 feet of the lot line for a three-family or more residential dwelling, or for commercial/industrial uses, sanitary sewers and appurtenances shall be designed to adequately serve all units with connections to the public system. The design and installation of said sewers shall be subject to the approval of the Planning Board and other appropriate agencies. The developer will be responsible for the creation and funding of any new or extension to an existing sewer district in the Town of Pomfret to serve said subdivision.
- B. Any lot which is subdivided for the purposes of constructing a habitable structure and is not served by a public sanitary sewer system shall be approved for its suitability for individual subsurface disposal systems by the Chautauqua County Health Department. Any lot not so approved shall be prominently marked on the plat "Not Approved For Habitable Building Purposes." No such lot shall be built upon with a habitable structure

unless the owner subsequently obtains subdivision approval for such lot as a building lot from both the Planning Board and the Chautauqua County Health Department.

- C. Once individual disposal systems are installed they shall be inspected by a licensed professional and certified to the Town as to their installation relative to the approved plans. The Town assumes no liability for the performance of individual disposal systems.
- D. In areas not presently served by public sanitary sewers, the Planning Board may require, in addition to installation of temporary individual on-site sewage disposal facilities, the installation and capping of sanitary sewer mains and house connections if studies of the Planning Board indicate that extension of public sanitary sewer trunks or laterals to service the property subdivided appears probable or necessary to protect the public health.

§ 250-33. Water supply.

- A. If appropriate, connection to the Town's public water supply shall be considered for all new development. The developer shall provide and dedicate to the Town a complete water distribution system. The design and installation of said system shall be subject to the approval of the Planning Board and jurisdictional agencies, including the Chautauqua County Health Department. The developer will be responsible for the creation and funding of any new or extension to an existing water district in the Town of Pomfret to serve said subdivision.
- B. If a private on-site system is to be used as a supplemental water supply, the following provisions shall apply:
 - (1) The individual source must have a minimum sustained flow of five gallons per minute of potable water.
 - (2) There must be a minimum flow pressure of 20 pounds at all fixtures in the proposed unit.
 - (3) A certificate of water quality and quantity from a New York State approved testing laboratory must be submitted to the Building Department before a building permit is issued.
 - (4) A backflow preventer shall be installed in accordance with NYS Public Health Laws and there shall be no interconnections between the municipal supply and an individual water supply system.

§ 250-34. Landscaping.

- A. A site landscaping plan shall be required of the developer on any lands developed in the Town. The landscaping plan will designate plant species and locations.
- B. Street shade trees shall be provided along all new streets. Trees shall be planted so as not to interfere with utilities, roadways, sidewalks, sight distances or streetlights. Location, spacing and species shall be approved by the Planning Board and the Town

Superintendent of Highways. The minimum caliper diameter of all trees planted shall be two inches.

C. A minimum of two trees shall be planted within each lot in a subdivision. Trees planted within private lots shall be outside the road or utility rights-of-way and easements, in accordance with the following provisions:

- (1) Impacts shall be considered on sight distances.
- (2) The trees are to be a minimum of 10 feet from the edge of any right-of-way and/or easement.
- (3) There shall be no underground utilities within 15 feet of any proposed tree.
- (4) The trees shall be of varieties that do not generally have a wide-spreading root system and a large spreading trunk base.

§ 250-35. Monuments.

- A. Permanent reference monuments shall be set at final grade at all corners and angle points of the boundaries of any major subdivision plan and at all street intersections and such intermediate points as may be required.
- B. These markers shall be set by a licensed land surveyor and certified to the Town as true and accurate before a certificate of occupancy is issued.

§ 250-36. Street signs.

Permanent street signs, of the same specifications as those of the Town Highway Department, shall be erected at each intersection by the Department and paid for by the Town.

§ 250-37. Streetlighting.

The Planning Board may require adequate street, sidewalk or site lighting to be installed. Such a system shall be coordinated with the electrical utility system and designed to keep light from illuminating areas outside of the developed site. The developer will be responsible for the formation and initial funding of any required lighting district in the Town.

§ 250-38. Utility supply systems to be installed underground.

- A. In every development, provisions shall be made for service from the private utility supply systems. All utilities serving a major subdivision and a streetlighting system shall be underground, rather than on poles, standards or towers. Underground conduit and cables shall be installed per the regulations of the Public Service Commission and minimum of two feet below any drainageway. Private underground utilities shall be installed within a fifteen-foot wide easement outside the road right-of-way.

- B. Utility services for any minor subdivision proposed shall be consistent with the service methods that exist within 500 feet of proposed developed area. Applicants shall discuss the service method to be used for every development with the Planning Board.

ARTICLE VII
Administration and Enforcement

§ 250-39. Administration.

- A. These regulations shall be administered by the Town Planning Board and shall be subject to the conditions and requirements stated herein.
- B. The Planning Board may, if it finds that strict compliance with these regulations may be unreasonable and not in the public interest, waive or modify the requirements so that substantial justice may be done and the public interest secured. Such modifications or waivers shall not, however, have the effect of nullifying the intent and purpose of any existing Town Comprehensive Plan, or any local legislative requirements.
- C. Whenever the requirements of these regulations are at variance with the requirements of any other legally adopted rules, regulations, laws or resolutions, the most restrictive or those imposing the higher standards shall govern, excepting those provisions of these regulations that may be waived or modified by the Planning Board.

§ 250-40. Fees and reimbursable costs.

- A. All fees applicable under these regulations are detailed in a separate fee schedule established by the Town Board and are adopted herein by reference. All fees shall be paid at appropriate times, and no building permits shall be issued until all owed fees are paid. Reasonable costs incurred by the Planning Board or its agents in connection with the review of a proposed subdivision shall be charged to and paid by the applicant.
- B. Final plat approval shall not be given until all applicable fees and expenses have been paid in full. The letter of credit shall not be released until all fees and expenses have been paid. Failure of the subdivider to pay the fees and expenses shall be grounds to deny building permits within the subdivision.
- C. The subdivider shall be responsible for all engineering and/or professional consulting fees incurred by the Planning Board in the review of the subdivision. The fee shall be in accordance with local law then in effect and adopted by the Town of Pomfret. Any and all other additional fees shall be as detailed in a separate fees schedule established by the Town Board by Town Board resolution, as from time to time amended.

§ 250-41. Enforcement and penalties.

- A. The Code Enforcement Officer is hereby authorized to enforce the provisions of these regulations or any determination made by the Planning Board in the administration of these regulations.

- B. No land shall be subdivided in violation of this chapter. Any subdivision attempted in violation hereof shall be invalid.
- C. No permit shall be issued for development upon any lot, tract, parcel or site created in violation of this chapter. The assignment of a tax number or other mode of separate identification of a unit of land by the Assessor for the purpose of tax administration shall not be deemed to create or legitimize a subdivision otherwise invalid hereunder.
- D. A violation of these regulations is an offense punishable by a fine not exceeding \$250 for any offense, recoverable with costs, and/or imprisonment not exceeding 30 days. Each day that a violation continues shall constitute a separate offense and shall be punished as herein provided.
- E. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or if any building, structure or land is used in violation of this chapter or of any regulation made under the authority conferred hereby, the Town of Pomfret or other proper local authority of the Town may institute any appropriate action of proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or division of land to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or out of such premises.

Chapter 300

ZONING

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[HISTORY: Adopted by the Town Board of the Town of Pomfret 5-10-1995 by L.L. No. 2-1995. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision of land — See Ch. 300.

ARTICLE I

Title, Purpose and Application

§ 300-1. Title.

A local law regulating the location, construction and use of buildings and structures and the use of land in the Town of Pomfret, County of Chautauqua, State of New York, and for said purposes dividing the Town into districts. This chapter shall be known and cited as the "Zoning Law of the Town of Pomfret."

§ 300-2. Enacting clause.

Pursuant to the authority conferred by the Laws of the State of New York and for each of the purposes specified therein, the Town Board of the Town of Pomfret, County of Chautauqua and the State of New York, has ordained and does hereby enact the following chapter regulating and restricting the location, size and use of buildings and other structures, and the use of land in the municipality.

§ 300-3. Purpose and objectives.

- A. Comprehensive Plan. The zoning regulations and districts set forth and outlined upon the Zoning Map are made in accordance with a Comprehensive Plan for the municipality. The enactment of the Zoning Chapter brings benefits to the community which may not be highly or immediately visible. However, the resulting conditions will enhance and preserve the quality of living, health and safety for the municipality.
- B. General. General benefits derived from zoning laws include the following:
 - (1) Promotes health, convenience, economics and general welfare of the community;
 - (2) Balances the rights of the public at large, private landowners and other various interest groups;
 - (3) Encourages the positive shaping of the future and the long-range benefits associated with zoning laws;
 - (4) Allows for the maintenance of an equitable assessment rule;
 - (5) Imposes some reasonable restraints on opportunists; and

- (6) Zoning is controlled locally, may be amended to meet changing needs, and has built-in flexibility for unique situations.

C. Safety. From a safety viewpoint, zoning laws can assist in the following:

- (1) Promotes fire safety by controlling building heights, separation of structures, etc.;
- (2) Promotes traffic safety by protecting the traffic-carrying capabilities of highways through setbacks, etc.;
- (3) Insures that floodplains are reasonably controlled with respect to types of uses, densities, etc.; and
- (4) Protects residents from other conditions which could cause injury or death.

D. Quality. Zoning laws perpetuate the highest possible quality of life by:

- (1) Maintaining a rural atmosphere in selected areas;
- (2) Promoting the retention of an aesthetically pleasing community by minimizing nuisances and visually unattractive developments;
- (3) Insuring adequate light, air and open space; and
- (4) Maintaining the character of residential neighborhoods by providing appropriate locations for living and raising a family through types of uses encouraged in a district.

E. Economics. Zoning laws also contribute a great deal to neighborhood stability by:

- (1) Optimizing the use of existing infrastructure;
- (2) Utilizing existing roadways optimally while discouraging the creation of new roads, except as needed;
- (3) Encouraging the retention of prime agricultural, commercial and industrial properties for those uses for which they are most suited; and
- (4) Encouraging the largest tax base possible through controlled development.

F. Stability. Zoning laws also contribute a great deal to neighborhood stability by:

- (1) Keeping rural municipalities from being a dumping ground;
- (2) Protecting property values and individual investments by encouraging proper development for each type of district;
- (3) Maintaining the character of a neighborhood by providing a stable and orderly living environment;
- (4) Keeping nuisances to a minimum, especially in residentially oriented neighborhoods; and

- (5) Allowing for the creation of a fair tax base by keeping informed of both new construction and demolition.

G. Health. Lastly, zoning laws protect public health through establishment of standards which address these issues. A zoning law:

- (1) Insures that appropriate amounts of light, air and open space are available for all residents;
- (2) Reinforces health standards, particularly with respect to sewage and water-related problems; and
- (3) Keeps unhealthy situations from arising which could cause disease or injury.

§ 300-4. Application of regulations.

- A. Compliance responsibility. It shall be the responsibility of all property owners, developers, lessors, or others involved with the temporary or permanent use of land or structures to comply with the regulations of this Zoning Chapter. No building or buildings shall be erected or altered which will substantially limit the usefulness or depreciate the value of the surrounding property.
- B. Regulation responsibility. The regulations of this chapter shall apply and shall require a zoning permit (except as specifically exempted) for the following situations:
 - (1) To occupy a structure or land;
 - (2) To erect, alter, enlarge, move or demolish a structure; and
 - (3) To change one use to another use to include the increasing of families utilizing land or structures.
- C. Other related regulations. The following regulations shall, as applicable, be complied with prior to occupancy or where specifically stated prior to issuance of a zoning permit:
 - (1) Subdivision laws. State and existing local subdivision laws must be complied with in addition to this Zoning Chapter.¹
 - (2) National Flood Insurance Program. It shall be the responsibility of the applicant for a zoning/building permit to insure that the National Flood Insurance regulations in addition to zoning regulations shall be complied with for those parcels located within the floodplain as shown on official Flood Insurance Administration maps.
 - (3) State Environmental Quality Review Act. Any development requiring a discretionary permit as well as amendments to this chapter shall be subject to an environmental assessment in accordance with state law.
 - (4) Health Department rules. In areas not served by municipal sewer or water systems, the regulations of the state and county and local facilities will apply. The applicant

1. Editor's Note: See Ch. 250, Subdivision of Land.

for a building or zoning permit must obtain a copy of the required Health Department permits for attachment to his application, before the issuance of local approval.

- (5) Fire and Building Code. No structure shall be erected, altered or used unless it complies, where applicable, with the New York State Uniform Fire Prevention and Building Code. The Code Enforcement Officer shall be sent copies of all zoning permits.

ARTICLE II

Definitions

§ 300-5. Language and interpretations.

For the purpose of this chapter, certain terms or words herein shall be interpreted or defined as follows: Words used in the present tense include the future tense. The singular includes the plural. The word "person" includes a corporation as well as an individual. The word "lot" includes "plot" or "parcel," the term "shall" is always mandatory. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged or designed to be used or occupied."

§ 300-6. Definitions.

Certain words and terms used in this chapter are defined as follows:

ACCESSORY APARTMENT — A secondary apartment developed in an existing single-family dwelling which meets the following conditions: no more than one unit shall be created per dwelling unit in districts where multiple units are allowed; the apartment shall have between 600 and 800 square feet of floor space; the apartment shall meet the square footage requirements of the Residential Code of New York State, the resultant primary dwelling meeting all area requirements such as minimum floor space; sufficient off-street parking shall be provided; no visible signs of an apartment shall be present; and finally, accessory dwellings may be utilized.²

ACCESSORY BUILDING OR USE — An accessory building or use is one which is subordinate to and serves a principal building or principal use; is subordinate in area, extent or purpose to the principal building or principal use served; contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served; and is located on the same lot as the principal building or principal use served but is not allowed to be located in a front yard.

ACCESSORY DWELLING UNIT — Dwellings intended for temporary occupancy and including but not limited to a travel trailer/motor home, truck camper or tent occupied by persons other than those generally residing in the primary dwelling unit and located on the same parcel as the primary unit.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ACCESSORY STRUCTURE — In one- and two-family dwellings not more than three stories high with separate means of ingress and egress, a building, the use of which is incidental and subordinate to that of the main building and which is located on the same lot.³

AGRICULTURAL STRUCTURE — Any structure used primarily and directly for agricultural activities and including but not limited to barns, silos, storage sheds, corn cribs, milk houses and similar structures.

AGRICULTURE, LIMITED — The production of crops, plants, vines and trees, provided no substantial odor or dust is produced within 100 feet of any building on adjacent property.

AIRPORT — Any land or water space frequently used for the landing and takeoff of any aircraft, including helicopters. All airports must comply with federal and state regulations and be approved by the Commissioner of Transportation for New York State.

ALTERATION — As applied to a building or structure, a change or rearrangement in the structural parts, the exit facilities, or an enlargement, whether by extending on a side or increasing in height, or moving from one location or position to another, the term "alter" in its various modes and tenses and in its particular form, refers to the making of an alteration.

ANIMAL, FARM — Any animal which customarily is raised for profit on farms and has the potential of causing a nuisance if not properly maintained.⁴

BED-AND-BREAKFAST DWELLING — An owner-occupied residence resulting from a conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than 10 transient lodgers and containing not more than five bedrooms for such lodgers.⁵

BOARDINGHOUSE — Any single-family dwelling unit lived in by a family where, for compensation, guest room lodging is provided with or without meals for up to two individuals. The term "boardinghouse" shall include rooming house, lodging house, and other similar terms.

BUFFER — A strip of land, fence or border of trees, etc., between one use and another, which may or may not have trees and shrubs planted for screening purposes, designed to set apart one use area from another. An appropriate buffer may vary depending on uses, districts, size, etc., and shall be determined by the permitting board.

BUILDING — Any structure having a roof supported by columns or by four independent, nonparty walls, and intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING AREA — The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

3. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

4. Editor's Note: The definition of "apartment house," which immediately followed this definition, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I). See definition of "multiple dwelling."

5. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

BUILDING LINE — A line formed by the intersection of a horizontal plane of average grade level and a vertical plane that coincides with the exterior surface of the building on any side. In case of a cantilevered section of a building or projected roof or porch, the vertical plane will coincide with the most projected surface. All yard requirements are measured to the building line.

BUILDING SETBACK LINE — An established line within a property defining the minimum required distance between the face of any structure to be erected and the edge of the road of an adjacent highway.

BUSINESS/INDUSTRY, LIMITED — A commercial venture which is the primary or major occupant of a structure and possesses the following characteristics: utilizes a maximum of 2,000 square feet of floor space; employs less than five employees; does not generate over 100 vehicles of business per twenty-four-hour period; does not have a substantial effect on the character of the neighborhood; and generates no nuisances (smoke, odor, noise, etc.).

BY RIGHT — Refers to uses requiring a permit but with no public hearing required.

CAMP — Any area of land and/or water on which is located a cabin, tent, travel trailer, motor home or other type of shelter suitable and intended for use in a temporary seasonal manner. For the purposes of this chapter, no minimum floor space shall be required for a camp structure.

CLUB — An organization catering exclusively to members and guests, including premises and buildings for recreational or athletic purposes which are not conducted primarily for gain, providing there are not conducted any vending stands, merchandising or commercial activities except as required generally for the convenience of the membership and purposes of such club.

CLUSTER DEVELOPMENT — A development of five acres or more where a developer may elect, after board approval, to cluster or group his development in return for the permanent creation of common areas. Overall, the density of development remains approximately the same as required by the district area requirements.

CODE ENFORCEMENT OFFICIAL — The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative. The Town of Pomfret has both a Code Enforcement Officer and a Zoning Enforcement Officer.⁶

COMMUNITY RESIDENCE — A residential facility, classified as a one-family dwelling that provides a supervised or unsupervised living environment for up to 14 mentally disabled individuals as defined by Mental Hygiene Law § 1.03(28).⁷

CONVENTIONAL DWELLING UNIT — See "dwelling unit."

DAY-CARE CENTER — A structure, together with its lot, operated on a regular basis for the purpose of providing daytime care for over five children or adults. Similar uses going

6. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

7. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

under names such as "day nurseries" shall for the purpose of this chapter be considered to be day-care centers.

DAY-CARE CENTER, LIMITED — Same as a day-care center except involving care for five or less children or adults.

DAY-CARE FAMILY HOME — In accordance with § 390 of the Social Services Law, an individual's home used to care for three to six children away from their homes for less than 24 hours per day for compensation for more than five hours per week. The provider's own children under six years old shall be counted toward the maximum number allowed. An annual permit from the Social Services Department is required with the applicant required to verify fitness to care for children, sound health, sufficient finances, an adequate physical plant, etc.

DECK — An unroofed open structure projecting from an outside wall of a structure without any form of enclosure.

DESIGN/ARCHITECTURAL STANDARDS — Standards approved by the Municipal Board for use in guiding the design of new signs. A design review board, appointed by the Municipal Board, shall be responsible for the administration of the design/architectural standards.

DEVELOPMENT — Means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations.

DOMESTIC ANIMAL — For the purposes of this chapter, a domestic animal shall include dogs and cats only.

DRIVE-IN — Businesses designed to either wholly or partially provide services or products to customers while in automobiles parked on the premises. Examples include but are not limited to: film shops, drive-in theaters and fast-food restaurants.

DRY HYDRANT — A pipeline capable of transporting water on a year-round basis from a pond, lake or other water source to a hydrant. The water is not under pressure, and thus to be utilized for fire fighting purposes must be properly engineered such that a pumper truck can successfully draw sufficient water volume from the hydrant.

DUPLEX — A dwelling structure arranged, intended or designed to be occupied by two families living independently of each other.

DWELLING — Any building that contains one or two dwelling units used, intended or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.⁸

8. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

DWELLING UNIT — One or more rooms providing living facilities, including equipment and provisions of cooking for a single household, including one or more persons living as a family. Dwelling units shall be categorized by four construction types:

- A. **Conventional.** A permanent single- or multiple-family dwelling unit which is built on site using conventional "stick" construction techniques among others. Included in this category are "precut" homes, which refers to a conventional dwelling unit built on-site utilizing wood framing members that are precut in a factory to the correct lengths but delivered to the building site unassembled. For the purpose of this chapter, a precut dwelling unit shall be considered to be the same as a conventional dwelling unit and shall not be considered to be a manufactured home.
- B. **Modular.** A permanent single or multifamily dwelling unit built in accordance with plans which have obtained an architectural stamp and seal under the New York State Building Code, which is brought to the building site as two or more units on a transport trailer. Modular dwelling units have no support frames as found on mobile homes, but instead are placed on a separate foundation. Modular dwelling units contain the same utility systems as conventional dwelling units. Modular dwelling units are not designed to be moved after they have been lifted and placed onto a permanent foundation. They are generally a minimum of 24 feet wide. **[Amended 6-12-1996 by L.L. No. 1-1996]**
- C. **Prefabricated.** A permanent single- or multiple-family dwelling unit which is brought to the building site in large sections or panels usually eight feet high and up to 40 feet long. Often the doors and windows are factory installed in the panels with the wall panels designed to be erected immediately after delivery. Prefabricated dwelling units are sometimes referred to as "panelized units."
- D. **Mobile homes.** A transportable, fully assembled, single-family dwelling unit suitable for year-round occupancy built in accordance with the HUD code for manufactured housing and having a HUD seal. Mobile dwelling units contain the same utility systems (water, waste, electricity) as found in conventional dwelling units. Mobile dwelling units are supported by a chassis which is an integral part of the unit. Mobile dwelling units are not designed to be lived in except when set up on a lot with proper utilities. This includes double-wide mobile dwelling units, but does not include travel trailers which are self-contained. For the purpose of this chapter, mobile homes are listed separately as allowed uses as are conventional (stick built/precut) modular, and prefabricated (panelized) dwelling units. **[Amended 6-12-1996 by L.L. No. 1-1996]**

EATING AND DRINKING ESTABLISHMENTS — Places where food and/or beverages are prepared and/or sold for consumption on the premises or for take out, including restaurants, tea rooms, cafeterias, bars, taverns and lunchrooms.

ENFORCEMENT OFFICER — Shall mean the enforcement officer of the municipality.

ESSENTIAL SERVICES — The erection, construction, alteration or maintenance by public utilities or municipal or other governmental agencies of gas, electrical, steam, water, sewage and communication systems and facilities. Railroad trackage and facilities and bus shelters shall also be considered as providing an essential service.

FAMILY — One or more persons, related by birth, marriage or other domestic bond, occupying a dwelling unit and living as a single, nonprofit housekeeping unit.

FARM — Any parcel of land containing at least 10 acres which is used to raise/grow agricultural products, livestock, poultry and/or dairy products with the intent of financial gain. It includes necessary farm structures and the storage of equipment used.

FENCE — Any artificially constructed barrier or vegetation barrier such as a hedge, with the purpose or intent of preventing passage or view, thus providing privacy.

FENCE, BARRIER — Any fence which is located near the perimeter of the property of which it is intended to provide privacy.

FENCE, FARM — Any fence whether located on a farm or not which has as its primary purpose the control of nondomestic animals.

FENCE, NONBARRIER — Any fence located a distance from the property line which provides privacy to a portion of land such as a patio or swimming pool.

FIRE RESISTANT — Any materials which possess the properties, construction or assembly qualities which under fire conditions prevents or retards the passage of excessive heat, gases or flames; and thus, is not easily ignited.

FLAMMABLE — Capable of igniting within five seconds when exposed to flame and continuing to burn.

FLOATING DISTRICT — Any zoning district for which district regulations are included in this chapter and yet for which no land has initially been designated on the Zoning Map⁹ to be included in said district. Such a district may become a reality through the amendment of the Zoning Map of the municipality in accordance with the amendment procedures of this chapter. The initiation of the creation of such a district may come from residents, the Planning Board, a developer or the Municipal Board itself, while the decision whether to activate such a district shall be made based upon the need for such a district.

FLOOR AREA, GROSS — See "floor space."¹⁰

FLOOR AREA, NET — See "floor space."¹¹

FLOOR SPACE — The sum of the gross horizontal areas of the floor or floors of a building which are enclosed and usable for human occupancy or the conduct of business. Said areas shall be measured between the outside face of exterior walls, or from the center line of walls separating two uses. Said areas shall not include areas below the average level of the adjoining ground, garage space or accessory building space.

FROST-FREE FOUNDATION — A continuous masonry substructure consisting of stone, poured concrete or concrete block, eight inches thick, placed on a concrete footer, such footer being equal to the thickness of the wall and depth by twice the width of the wall in width, a

9. Editor's Note: The Zoning Map is on file in the Town offices.

10. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

11. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

minimum of 36 inches below grade or below frost line, whichever is deeper, as designed and stamped by a New York State licensed architect or engineer. [Added 7-9-1997 by L.L. No. 3-1997¹²]

GARAGES, PRIVATE — A secondary building used in conjunction with a primary building which primarily provides for the storage of motor vehicles and in which no occupation, business or services for profit are carried on.

GARAGES, PUBLIC — Any garage other than a private garage, operated for gain, available on a rental basis for the storage of motor vehicles, including the supply of gasoline and oil.

GAS COMPRESSOR — Any mechanical equipment utilized to cause the movement of natural gas through a transmission line system.

GAS STATION — The retail sale of fuel and related oil products as well as minor service repairs and routine maintenance to include oil and tire changes.

GENERAL RETAIL BUSINESS — See "retail business."

GENERAL SERVICE BUSINESS — See "service business."

GENERAL WHOLESALE BUSINESS — See "wholesale business."

GRAVEL PIT/QUARRY/SAND PIT — A lot or land or part thereof used for the purpose of extracting stone, sand, gravel or topsoil for sale, as an industrial operation, and exclusive of the process of grading a lot preparatory to the construction of a building for which application for building permit has been made.

GRAVEL PIT, SMALL — Any gravel pit involving the extraction of less than 500 yards annually.¹³

HABITABLE SPACE — A space in a building for living, sleeping, eating or cooking, or used as a home occupation. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.¹⁴

HANDRAIL — A horizontal or sloping rail intended for grasping by the hand for guidance or support.¹⁵

HEAVY VEHICLES — Automobile wreckers, commercial trailers, semitrailers, or any vehicle or truck with three or more axles, with a gross weight in excess of 10,000 pounds, which is subject to vehicle regulations and state inspections for use on public highways. [Amended 6-13-2007 by L.L. No. 2-2007]

HEIGHT — The vertical distance from the highest point on a structure (excepting chimneys and other items listed in Article V, § 300-23, Height) to the average ground level of the grade where the wall or other structural elements intersect the ground.

12. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

13. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

14. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

15. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

HOME FOR AGED — A structure principally used to house senior citizens in which a separate household is established for each family. Nursing homes are not considered to be a home for aged.

HOME OCCUPATION — A use conducted within a dwelling and carried on by the inhabitants thereof, which is clearly secondary to the use of the dwelling for dwelling purposes and does not substantially change the character of the residence or neighborhood. Home occupations shall meet all conditions specified in the section on home occupations.¹⁶ In some instances, accessory buildings may be utilized for home occupations.

HORTICULTURE, PRIVATE — The growing of fruits, vegetables, flowers or ornamental plants for one's own pleasure and use. Also referred to as a "private garden."

HOUSEHOLD SALE — Household sale for the purpose of this chapter shall include lawn sales, patio sales, garage sales, basement sales, flea markets, bazaar, or other similar types of sales. A household sale shall be distinguished from a business in that it involves the infrequent sale of used merchandise which, for private sales, was not obtained from outside the household. Nonprofit or fraternal organizations on the other hand may obtain their sale items from donations received from members or other sources.

HOUSING, ELDERLY — Apartments containing eating, sleeping and living space and designed with elderly fully independent residents in mind. Generally, these apartments contain smaller than normal floor space, require less parking and less active recreational area. Additionally, common eating areas are sometimes provided.

HUNTING CAMP — See "camp."

INDUSTRY, GENERAL — The manufacture, preparation, processing, milling or repair of any article, substance or commodity, and which involves no dangerous or toxic product or emissions. Additionally, noise, odors or other nuisances incidental to productions and processing shall be limited to a level which does not affect the use or enjoyment of property outside of the Industrial District.

JUNK/TRASH — Any old, discarded, unusable objects of any kind, such as tires, vehicles, building materials, scrap metal, machinery, appliances, furniture, equipment, etc., whether made of metal, fiber or plastics or any other material; old cordage, ropes, rags, fibers or fabrics; old rubber or other waste or discarded materials dangerous to health, regardless of the kind, form, shape or nature. **[Added 6-13-2007 by L.L. No. 2-2007]**

16. Editor's Note: See § 300-42.

JUNK VEHICLE [Amended 6-13-2007 by L.L. No. 2-2007] —

- A. Any motor vehicle, including, but not limited to, automobile, bus, trailer, truck, motor home, motorcycle, minibike, ATV, boat or snowmobile or other device originally intended for travel on the public highways, which meets any of the following conditions:
- (1) Its registration and/or inspection have expired.
 - (2) It is abandoned, wrecked, discarded or dismantled, and stored out of doors.
- B. With respect to any motor vehicle not required to be licensed or a motor vehicle not usually used on public highways, the fact that such motor vehicle has remained unused for more than six months and is not in condition to be removed under its own power shall be presumptive evidence that such motor vehicle is a junk vehicle.

JUNKYARD — See definitions of "scrap yards" and "vehicle dismantling yards."¹⁹

LARGE GROUP — Any gathering of 500 or more people, occurring on a nonregular basis and involving either the charging of a fee, request for a donation or sale of products or services.

LOADING SPACE — Space logically and conveniently located exclusively for bulk pickups and deliveries at commercial structures.

LOT — A parcel of land occupied or designed to be occupied by one building and the accessory buildings or uses customarily incidental to it, including such open space as are required by this Zoning Chapter.

LOT, COVERAGE — That percentage of the lot which is devoted to building area. District regulations refer to the maximum percentage of the lot area devoted to building area.

LOT LINE — Any line dividing one lot from another.

LOT, SIZE — An area of land which is determined by the limits of the lot lines bounding that area and expressed in terms of square feet or acres.

LOT WIDTH — The horizontal distance between the side lot lines measured at right angles to its depth at the building line.

MANUFACTURED HOME — A factory-manufactured dwelling unit built on or after June 15, 1976, and conforming to the requirements of the Department of Housing and Urban Development (HUD), Manufactured Home Construction and Safety Standards, 24 CFR Part 3208, 4/1/93, transportable in one or more sections, which in the traveling mode is eight feet (2,438 mm) or more in width or 40 feet (12,192 mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with respect to which the manufacturer

19. Editor's Note: The former definition of "kennel," which immediately followed this definition, was repealed 12-13-2000 by L.L. No. 1-2000. See now § 300-72B.

voluntarily files a certification required by the Federal Department of Housing and Urban Development and complies with the standards established under the national Manufactured Housing Construction and Safety Act of 1974, as amended. The term "manufactured home" shall not include any self-propelled recreational vehicle.²⁰

MOBILE DWELLING UNIT — See "dwelling unit" (same as "mobile home").

MOBILE HOME — A factory-manufactured dwelling unit built prior to June 15, 1976, with or without a label certifying compliance with NFPA, ANSI or a specific state standard, transportable in one or more sections, which in the traveling mode is eight feet (2,438 mm) or more in width or 40 feet (12,192 mm) or more in length, or, when erected on site, is 320 square feet (29.7 m²) minimum, constructed on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term "mobile home" shall not include travel trailers or any self-propelled recreational vehicle.²¹

MOBILE HOME PARK — A parcel of land upon which two or more mobile homes are set up for living purposes.

MODULAR BUILDING — A building wholly or in substantial part manufactured in a manufacturing facility, intended or designed for permanent installation or assembly on a building site, and whereby all portions may not be reasonably inspected at the installation site without disassembly or destruction thereof.²²

MODULAR DWELLING UNIT — See "dwelling unit."

MODULAR HOME — A factory-manufactured dwelling unit, conforming to applicable provisions of this code and bearing insignia of approval issued by the State Fire Prevention and Code Council, which is constructed by a method or system of construction whereby the structure or its components are wholly or in substantial part manufactured in a manufacturing facility, intended or designed for permanent installation, or assembly and permanent installation.²³

MOTOR HOMES — A self-propelled, relatively small temporary living quarter generally used as mobile vacation homes. Motor homes generally have self-contained, independent utility systems.

MOTOR VEHICLE SERVICE STATION — Any area of land, including structures therein, that is used for the sale of gasoline or any other motor vehicle fuel and oil, and other lubricating substances; including any sale of motor vehicle accessories; and which may or

20. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

21. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

22. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

23. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means, body and fender work or the dismantling or replacing of engines.

MULTIPLE DWELLING — A building arrangement intended or designed to be occupied by three or more families living independently of each other. Condominiums and townhouses shall be considered to be apartments.²⁴

MULTIPLE USE BUSINESS — A building or buildings in one contiguous location under single ownership which has more than one distinct business (e.g., restaurant and a gift shop) as defined in the allowed uses.

MUNICIPALITY — Shall mean the village or town for which this chapter applies.

NONCONFORMING USE — That use of a building, structure or land legally existing at the time of enactment of this Zoning Chapter or amendment thereto, and which is not one of those permitted in the district in which it is situated.

NUISANCE — A violation of this chapter caused by an offensive, annoying, unpleasant or obnoxious use of characteristics of said use which produces effects of such a nature or degree that they are detrimental to the health, safety, general welfare, property values, etc., thus resulting in harm or injury to adjacent or nearby properties. Common examples include excessive odors, noise, smoke, vibration, light, runoff, traffic, development density, electronic interference, etc.

NURSERY (FOR CHILDREN) — See "day-care center."

NURSING HOME — Also referred to as a "convalescent home," it includes buildings where, for a fee, nonambulatory residents are provided full-time convalescent or chronic care by skilled nurses in addition to room and board. No care for the acutely ill is provided, and thus, clearly, hospitals and mental health centers are not to be considered as a nursing home.

OFFICE — A place which is used to conduct a business or profession and is occupied by a physician, surgeon, dentist, lawyer or person providing similar services or in whose office the functions of consulting, recordkeeping and clerical work are performed.

OPEN SPACE — Common, public or private greens, parks or recreation areas, including playgrounds, woodland conservation areas, walkways, trails, stream crossings and drainage control areas, golf courses, swimming pools, tennis courts, ice skating rinks and other similar recreational uses, but which may not include any such uses or activities which produce noise, glare, odor, air pollution, fire hazards or other safety hazards, smoke, fumes, or any use or activity which is operated for a profit, or other things detrimental to existing or prospective adjacent structures or to existing or prospective development of the neighborhood.

PANELIZED — See "dwelling unit, prefabricated."

PARKING SPACE — A required off-street parking space. (See supplemental section.²⁵)

24. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

25. Editor's Note: See § 300-48, Parking.

PERMIT — An official document or certificate issued by the authority having jurisdiction that authorizes performance of a specified activity.²⁶

PLANNING BOARD — Refers to the Municipal Planning Board unless otherwise indicated.

POND — A man-made body of water utilizing natural materials which is used for recreational purposes as well as for fire protection.

PORCH — A roofed open structure projecting from an outside wall of a structure without any form of enclosure. Screens used as insect barriers are permissible and shall not cause the porch to be considered to be an enclosure.

PRECUT — See "dwelling unit, conventional."

PREEXISTING USE — Any use, either conforming or nonconforming with this chapter, that is legally existing at the enactment date of this chapter.

PREFABRICATED DWELLING UNIT — See "dwelling unit."

PRINCIPAL USE — The main use of land or buildings as distinguished from a subordinate or accessory use.

PRIVATE CAMP — A parcel of land on which a travel trailer, tent, cabin or other structure is present for use on a seasonal basis for leisure or recreation purposes. (See supplemental section.²⁷)

PROFESSIONAL — Any person with an advanced college degree who possesses a license to practice. This includes but is not limited to doctors, lawyers, CPA's, engineers, etc.

PUBLIC — Owned, operated or controlled by a governmental agency (federal, state or local), including a corporation created by law for the performance of certain specialized governmental functions, a public school district or service district.

PUBLIC, QUASI — An organization which serves a governmental function but is not a governmental unit per se. A volunteer fire department is an example. Additionally, any use owned or operated by a nonprofit or religious organization providing educational, cultural, recreational, religious or similar types of programs.

PUBLIC UTILITY — A municipal water and/or sewer.²⁸

RECREATIONAL VEHICLE — A vehicle primarily designed as temporary living quarters for recreational, travel or camping use, which either has its own mode of power or is drawn by another vehicle.

RECREATION, COMMERCIAL — Recreational facilities operated as a business and open to the general public for a fee. Recreational facilities shall include, but not be limited to, golf courses, ice skating rinks and swimming pools.

26. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

27. Editor's Note: See § 300-70, Seasonal recreation camps.

28. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

RESIDENCE, MULTIFAMILY — A building used or designed for three or more dwelling units, including apartment houses, townhouses and condominiums.

RESIDENCE, SINGLE-FAMILY DETACHED — A detached building designed to contain one dwelling unit.

RESIDENCE, TWO-FAMILY — Either of the following:

- A. A building having two side yards and accommodating but two dwelling units; or
- B. A detached building containing two dwelling units separated by a party wall, each having one side yard.

RESIDENTIAL CONVERSIONS — The creation of one or more additional dwelling units within existing residential structure in accordance with conditions set forth in this chapter.

REST HOME — Commonly referred to as "homes for the aged." These facilities provide private sleeping rooms for ambulatory (able to walk) residents. Generally, rest homes have common eating areas and provide minimal medical aid to residents. Only incidental convalescent care is provided which does not involve either trained nurses, physical therapy or other activities provided in a hospital or nursing home.

RETAIL BUSINESS, GENERAL — For the purposes of this chapter, whenever a general retail business is listed as an allowed use, it shall signify that any retail business which has a minimal negative impact and can meet the conditions specified in this chapter shall be allowed in addition to the specific retail uses as being allowed.

RIDING ACADEMY — Any establishment where horses are kept for riding for compensation. Riding academies shall be situated on a minimum of 10 acres of land and only in districts where allowed. Additionally, horses can be boarded and groomed and instructions in riding, jumping and showing can be offered.

ROADSIDE STAND — A structure (either enclosed or open), a booth or a transportable vehicle, the purpose of which is the sale of produce and other farm products to the general public. Roadside stands are located along a roadway in such a manner as to provide safe and convenient off-street parking even though front yard setbacks are not required to be met. All conditions specified in this chapter must be met, otherwise a full business use permit must be applied for.

SAWMILL — Commercial facility containing sawing and planing equipment utilized for the preparation of dimensional lumber used for construction. No on-premises sales to the general public takes place.

SCRAP YARD — Any place of storage or deposit of more than 100 square feet, usually of a commercial nature, where metals, glass, rags, etc., are held, whether for the purpose of disposal, reclamation, recycling or resale of such, including establishments having facilities for processing iron, steel and nonferrous scrap for melting purposes.

SECTION — Unless otherwise noted, section and section numbers shall refer to this chapter.

SEMI-PUBLIC — Places of worship, institutions for the aged and children, nurseries, nonprofit colleges, hospitals, libraries, cemeteries and institutions of the philanthropic nature; also, open space.

SERVICE BUSINESS, GENERAL — For the purpose of this chapter, whenever general service business is listed as an allowed use, it shall signify that any service business which has a minimal negative impact and can meet the conditions specified in this chapter shall be allowed, in addition to the specific service uses listed as being allowed.

SETBACK — Distance measured from the street edge to a structure, sign, etc. For private roads, the front yard setback shall also be the distance from the edge of the travelled portion of the road to the closest point on the structure.

SHOOTING RANGE — The parcel(s) of land used for discharging of firearms with the intent to hit any object (moving or stationary) other than live game, by any person who pays a fee (e.g., membership fees, shooting fee, etc.) to use said facilities. Commercial shooting ranges include but are not limited to nonprofit clubs (skeet club, etc.); and profit motivated business. For the purpose of this chapter a shooting range shall be considered to be a trap/skeet or other type of range utilizing shot guns as well as an indoor (fully enclosed) range utilizing rifles or pistols not classified as shootings.

SHOPPING CENTER — A group of commercial establishments occupying adjoining structures, all of which may be deemed as one building and normally owned/managed as one unit. Off-street parking as well as loading/unloading facilities are provided as an integral part of the unit.

SIGN — Any structure or part thereof, attached thereto, or painted or represented thereon, which shall display or include any letter, work, model, banner, flag, pennant, insignia, device or representation used for the purpose of bringing the subject thereof to the attention of the public. The word "sign" does not include the flag, pennant or insignia of any nation, state, city or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, religious or like organization, or the property thereof.

SIGN, ADVERTISING, OFF-PREMISES — A sign advertising a business, entity or organization not located on the premises of said business, entity or organization. Said signs may be freestanding, banner-type or billboard-type signs. [Added 4-25-2005 by L.L. No. 2-2005]

SIGN, ADVERTISING, ON-PREMISES — A sign advertising a business, entity or organization located on the same premises as that business entity or organization. Said signs may be freestanding, banner-type or billboard-type signs. [Added 4-25-2005 by L.L. No. 2-2005]

SIGN AREA — The area defined by the frame or edge of a sign. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided (straight sides) geometric shape which most closely outlines the said sign. Only one side of the sign shall be used in measuring the area.²⁹

29. Editor's Note: The definition of "sign, advertising," which immediately followed this definition, was repealed 4-25-2005 by L.L. No. 2-2005.

SIGN, BILLBOARD — Any off-premises advertising sign. [Amended 4-25-2005 by L.L. No. 2-2005]

SIGN, BUSINESS — A sign for permitted use conducted on the premises on which shall identify the written name and/or the type of business and/or any trademark of an article for sale or rent on the premises or otherwise call attention to a use conducted on the premises.

SIGN, DIRECTIONAL — A sign which identifies an attraction or activity and provides directional information useful to the traveler in locating the attraction, such as mileages, route numbers, etc.

SIGN, IDENTIFICATION — A sign for a permitted use conducted on the premises for articles sold, or distributed by that use, or displaying the name of the premises.

SIGN, INSTRUCTIONAL — A sign conveying instructions with respect to the use of the premises, or a portion of the premises on which it is maintained, or a use or practice being conducted on the premises.

SIGN, NAMEPLATE — Any sign attached directly to the wall of a building occupied by the person to whom such a sign indicated the name, occupation and/or address of the occupant. A nameplate shall be not over two square feet in size.

SIGN, PUBLIC — Those signs erected to direct flow, speed and direction of traffic, effect general public safety or name streets and buildings.

SIGN, TEMPORARY — A sign which offers premises for sale, rent or development; or announces special events or calls attention to new construction or alteration; or offers a sale of seasonal garden produce, garage, household, porch items or signs of similar nature; or political signs. Temporary status of signs will expire after six months.

SOLAR STRUCTURE — Any structure containing either a passive or active heat storage device which is dependent on direct contact with the sun in order to operate. Said heat storage devices are commonly used to heat totally or partially water, rooms, etc.

SPECIAL USE PERMIT — A special use permit deals with special permission, granted only by the permitting board after public hearing to occupy land for specific purposes when such use is not permitted by right, but is listed as permitted by special use permit.

STORAGE STRUCTURE — Any constructed combination of materials located or attached to the ground utilized for noninhabited storage purposes. Used trucks and similar motor vehicles shall not be utilized as storage structures. For the purposes of this chapter, storage structures shall be less than 150 square feet with larger structures considered to be customary accessory uses.

STOREFRONT AREA — That area of the front of a building associated with the first floor only. For businesses located above a first floor, the storefront area shall be calculated based on the ground floor entrance only.

STORY — That portion of a building excluding attics and cellars included between the surface of any floor and the floor next above it, or if there be no floor above it, then the space between any floor and the ceiling next above it.

STORY, HALF — A story under a gable, hip or gambrel roof, the wall plates of which, on at least two opposite exterior walls, are not more than two feet above the floor of such story.

STREET EDGE — A curb or in the absence of a curb, the furthest outside point of a street or roadway which is designed and constructed to carry vehicles on a regular basis. A paved or unpaved shoulder of a road shall not be considered in determining the street edge.

STRUCTURE — A building constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Mobile homes are not considered to be structures for the purpose of this chapter. (A mobile home is considered to be a structure under the Flood Insurance Program.)

SWIMMING POOL — Any man-made receptacle for water (excepting farm ponds) located above or below ground designed for capacity of over four feet in depth at any point and intended to be used for swimming.

TEMPORARY DWELLING UNIT (MOBILE) — Dwellings intended for temporary occupancy, and including but not limited to: travel trailers, motor homes, truck campers and tents. Persons residing in temporary dwelling units generally do not include those residing in the primary dwelling unit located on the parcel.

TEMPORARY USE — An activity conducted within a structure or on a tract of land for a specific limited period of time which may not otherwise be permitted by the provision of this chapter. For example, a building used in conjunction with new construction which would be removed upon completion of the work.

TOWER — A structure generally fixed on the ground, to gain height, for any use, but its main function is to receive and transmit signals or host such equipment. [Amended 6-13-2007 by L.L. No. 2-2007]

TOWNHOUSE — A dwelling unit designed to be occupied as a residence for one family and one of a group of three or more attached dwellings, placed side by side, separated by party walls, each containing one or two stories, and each having separate front and rear, or side and rear, or front and side entrances from the outside.

TRACT — A large piece of land under single ownership.

TRASH — See "junk/trash."²⁸

TRAVEL TRAILER CAMP/COMMERCIAL CAMPGROUND — A parcel of land used or intended to be used, let or rented on a seasonal basis for occupancy by campers or for occupancy by or of travel trailers, motor homes, tents or movable or temporary dwellings, rooms or sleeping quarters of any kind.

TRAVEL TRAILER/CAMPER — A relatively small temporary living quarter designed to be hauled behind a vehicle. Travel trailers are not designed as permanent living quarters and generally are used on a seasonal basis. They are supported at all times primarily by their own wheels. Travel trailers generally have self-contained independent utility systems. See definition of "accessory dwelling unit."

28. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

TRIPLEX — A dwelling arranged, intended and designed to be occupied by three families living independently of each other.

USE — Any purpose for which land or a building is designed, arranged or intended or for which it is or may be occupied or maintained.

UTILITY, PUBLIC — See "public utility."²⁹

VARIANCE — Permissive waivers from the terms of the chapter, as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the chapter will result in unnecessary hardship or practical difficulty or that the spirit of the chapter shall be observed and substantial justice done and granted by the Zoning Board of Appeals.

VEHICLE DISMANTLING YARD — Any place or storage of deposit where two or more unregistered, old or secondhand vehicles, no longer intended for or in condition for legal use on public highways, are held, whether for resale of parts or materials, or used parts and waste materials, which, when taken together equal in bulk two or more vehicles, shall constitute a vehicle dismantling yard. This excludes farm vehicles.

VEHICLE REPAIR SHOP — A commercial business operated for profit which repairs or services motor vehicles.

WHOLESALE — A business establishment engaged in selling to retailers or jobbers rather than consumers in wholesale lots.

WHOLESALE BUSINESS, GENERAL — For the purpose of this chapter, whenever a general wholesale business is listed as an allowed use, it shall signify that any wholesale business which has a minimal negative impact and can meet the conditions specified in this chapter shall be allowed in addition to the specific wholesale uses listed as being allowed.

WHOLESALE, LIMITED — A wholesale business with a maximum of three employees, no more than 4,000 square feet of floor space and no outside storage.

YARD, FRONT — The area extending across the entire width of the lot between the building line and the front edge of the road, into which space there shall be no extension of building partitions or accessory structures. For parcels adjacent to a lake, the front yard shall consist of the land area between the primary structure and the public or private roadway serving the property.

YARD, REAR — The area extending across the entire width of the lot between the rear wall of the principal building and rear line of the lot, and unoccupied except for parking, loading and unloading space, and garages and carports.

YARD, SIDE — That open area of a lot situated between the side lines of the building and the adjacent side lines of the lot.

ZONING BOARD OF APPEALS — The Zoning Board of Appeals of the municipality.

29. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

ZONING ENFORCEMENT OFFICER — The officer or other designated authority charged with the administration and enforcement of this code with regard to zoning issues, or a duly authorized representative. The Town of Pomfret has both a Code Enforcement Officer and a Zoning Enforcement Officer.³⁰

ZONING PERMIT — Written permission issued by the appropriate Municipal Board/Officer authorizing the use of lots or structures. Zoning permits are issued for uses which are permitted by the Zoning Chapter where all conditions required by the chapter can be met for the district where the lot/structure is located. The relocation, enlargement, alteration or other change of use shall require the issuing of a zoning permit. The two types of permits include by right permit and special use permit.

ARTICLE III Establishment of Districts

§ 300-7. Creation and enumeration of districts.

For the purpose and provisions of this chapter, the municipality is hereby divided into the following types of districts:

R1	Residential
R2	Large Lot Residential
R3	Lakeside Residential
AR1	Agricultural/Residential
AR2	Agricultural/Residential
B1	Neighborhood Business (Floating)
B2	Highway Business
I1	Industrial District
I2	Industrial District
C1	Conservation

§ 300-8. Zoning Map.

The boundaries of the aforesaid zoning districts are hereby established shown on the map entitled "Zoning District Map of the Town of Pomfret, New York, dated July 1994," which map accompanies and is made a part of this chapter and shall have the same force and effect as if the Zoning Map, together with all notations, references and other information shown thereon, were fully set forth and described herein.³¹

30. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

31. Editor's Note: The Zoning Map is on file in the Town offices.

§ 300-9. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Zoning Map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or highway right-of-way lines shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the center lines, or street lines of streets, or the center lines or right-of-way lines of highways, such district boundaries shall be construed as being parallel thereto and at such distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.
- D. Where the boundary of a district follows a stream, lake or other body of water, said boundary line shall be deemed to be at the limit of jurisdiction of the municipality unless otherwise indicated.
- E. Any flood boundary shown on the Zoning Map indicates general location only. The precise location of floodplain boundaries shall be established by the Enforcement Officer after consulting with the Chautauqua County Planning Department.
- F. Any party aggrieved by an interpretation may appeal to the Zoning Board of Appeals, whose decision will be final. However, all decisions of the Zoning Board of Appeals are subject to court reviews in accordance with applicable laws of the State of New York. The burden of proof shall be on the appellant.

ARTICLE IV District Regulations

§ 300-10. Residential (R1) District.

- A. Purpose. R1 Districts are established to primarily provide for the new "subdivision" single-family development or to protect existing neighborhoods from encroachment of other noncompatible uses. Very few other uses are allowed in this district. R1 Districts are generally served by municipal utility systems, thus accounting for its high development potential. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Duplex-attached

Limited agriculture

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Limited day care — four or less persons

Public park

Swimming pool — private — in accordance with § 300-82

Garage — accessory

Customary accessory use

Storage structure — in accordance with § 300-69

Open porch/deck

Television dish antenna (over four-foot diameter) — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

- * Signs — in accordance with § 300-50

C. Uses by special use permit (hearing required).

Boarding home/bed-and-breakfast — in accordance with § 300-74

Cluster residential development — in accordance with § 300-38

Agricultural land use

Agricultural buildings

- * Household sale — in accordance with § 300-43

School public/private

Day-care center — over five persons — in accordance with § 300-67

Church/rectory

Golf course — private/public

Tennis court — private (accessory to dwelling)

Tennis court — public/commercial

Swimming pool — public/commercial

- * Solar system — in accordance with § 300-53

Pond — in accordance with § 300-46

Farm animals — in accordance with § 300-85

- * Fences/walls — in accordance with § 300-51

Gasoline/volatile fuel tank — in accordance with § 300-86

D. Uses requiring no permit (requires compliance with chapter).

Horticulture — private

Roadside stand — limited — in accordance with § 300-44

- * Household sale — in accordance with § 300-43

- * Home occupation — in accordance with § 300-42

Wildlife habitat

- * Solar system — in accordance with § 300-53

Topsoil removal — in accordance with 300-66

Outdoor storage — recreational vehicle — in accordance with § 300-68

Parking — private — in accordance with § 300-48

Temporary dwelling units — in accordance with § 300-61

Junk cars/vehicles on private property — in accordance with § 300-84

Trash on private property — in accordance with § 300-71

* Fences/walls — in accordance with § 300-51

Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³³

	Residential (R1)	
	Both Public Utilities	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in square feet)	20,000	—
Minimum front lot width (in feet)	100	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	20,000 + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100

33. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Residential (R1)	
	Both Public Utilities	
	Primary Use	Accessory Use
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	20,000 + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—
Other uses (nonresidential)		
Minimum lot size (in square feet)	20,000	—
Minimum front lot width (in feet)	100	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet)	—	—

§ 300-11. Large Lot Residential (R2) District.

A. Purpose. R2 Districts are established to primarily protect existing neighborhoods from encroachment of other noncompatible uses. Very few other uses are allowed in this district. R2 Districts are generally served by utility systems, thus accounting for its high development potential. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.

B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Duplex — attached

Agricultural buildings

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Limited day care — four or less persons

Public park

Swimming pool — private — in accordance with § 300-82

Garage accessory use

Customary accessory use

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Homes for the aged

Nursing homes/rest home

Multiple dwellings — attached — in accordance with § 300-40

Cluster residential development — in accordance with § 300-38

* Household sale — in accordance with § 300-43

* Home occupation — in accordance with § 300-42

School — public/private

Day-care center — over five persons — in accordance with § 300-67

Church/rectory

Golf course public/private

Tennis court — private (accessory to dwelling)

- Tennis court — public/commercial
- Swimming pool — public/commercial
- * Solar system — in accordance with § 300-53
- Pond — in accordance with § 300-46
- Farm animals (noncommercial) — in accordance with § 300-85
- * Fences/walls — in accordance with § 300-51
- Gasoline/volatile fuel tank — in accordance with § 300-86

D. Uses requiring no permit (requires compliance with chapter).

- Agricultural land use
- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43 wildlife habitat
- * Solar system — in accordance with § 300-53
- * Home occupation — in accordance with § 300-42
- Topsoil removal — in accordance with § 300-66
- Outdoor storage — recreational vehicle — in accordance with § 300-68
- Parking — private — in accordance with § 300-48
- Temporary dwelling units — in accordance with § 300-61
- Junk cars/vehicles on private property — in accordance with § 300-84
- Trash on private property — in accordance with § 300-71
- * Fences/walls — in accordance with § 300-51
- Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³⁴

	Large Lot Residential (R2)		Large Lot Residential (R2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Single-family units				
Minimum lot size (in acres)	2	—	1	—
Minimum front lot width (in feet)	200	—	100	—

34. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Large Lot Residential (R2)		Large Lot Residential (R2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—
Multiple-family units (standard)				
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—	1 acre + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—
Multiple-family units (elderly)				
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—	1 acre + 5,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—	30%	—

	Large Lot Residential (R2)		Large Lot Residential (R2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—	600	—
Other uses (nonresidential)				
Minimum lot size (in acres)	2	—	2	—
Minimum front lot width (in feet)	200	—	200	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet)	—	—	—	—

§ 300-12. Lakeside Residential (R3) District.

- A. Purpose. Most forms of residential uses are permitted in this district in addition to numerous water-oriented, tourism-related uses to include boardinghouses. At present this property consists of various single ownership parcels with a great degree of lake exposure. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

- Single-family dwelling — detached (conventional, prefab., modular)
- Duplex — attached
- Utilities (public) (e.g., water)
- Utilities (quasi-public) (e.g., telephone)
- Limited day care — four or less persons
- Public park
- Boathouse/dock/pier — public boat launch
- Swimming pool — private — in accordance with § 300-82
- Garage — accessory
- Customary accessory use
- Private boathouse
- Storage structure — in accordance with § 300-69
- * Signs — in accordance with § 300-50
- Open porch/deck
- Television dish antenna — in accordance with § 300-52
- Temporary mobile home — inhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

- Boarding homes/bed-and-breakfast — in accordance with § 300-74
- Cluster residential development — in accordance with § 300-38
- * Household sale — in accordance with § 300-43
- School — public/private
- Day care center — over five persons in accordance with § 300-67
- Church/rectory
- Tennis court — private (accessory to dwelling)
- Tennis court — public/commercial
- Swimming pool — public/commercial
- Recreation camp — public/quasi-public
- Travel trailer park — commercial — in accordance with § 300-63
- * Solar system — in accordance with § 300-53
- Pond — in accordance with § 300-46
- Farm animals (noncommercial) — in accordance with § 300-85
- * Fences/walls — in accordance with § 300-51
- Gasoline/volatile fuel tank — in accordance with § 300-64

D. Uses requiring no permit (requires compliance with chapter).

- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- * Home occupation — in accordance with § 300-42
- Wildlife habitat
- * Solar system — in accordance with § 300-53
- Topsoil removal — in accordance with § 300-66
- Outdoor storage — recreational vehicle — in accordance with § 300-68
- Parking — private — in accordance with § 300-48
- Temporary dwelling units — in accordance with § 300-61
- Junk cars/vehicles on private property — in accordance with § 300-84
- Trash on private property — in accordance with § 300-71
- * Fences/walls — in accordance with § 300-51
- Junk farm vehicles — in accordance with § 300-84

- E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³⁵

	Lakeside Residential (R3)		Lakeside Residential (R3)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Single-family units				
Minimum lot size (in square feet)	20,000	—	15,000	—
Minimum front lot width (in feet)	100	—	100	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—

35. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Lakeside Residential (R3)		Lakeside Residential (R3)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Multiple-family units (standard)				
Minimum lot size (base + square feet per unit)	20,000 + 10,000	—	15,000 + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—
Multiple-family units (elderly)				
Minimum lot size (base + square feet per unit)	20,000 + 10,000	—	15,000 + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—	600	—
Other uses (nonresidential)				
Minimum lot size (in square feet)	20,000	—	15,000	—

	Lakeside Residential (R3)		Lakeside Residential (R3)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Minimum front lot width (in feet)	100	—	100	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet)	—	—	—	—

§ 300-13. Agricultural/Residential (AR1) District.

- A. Purpose. AR Districts are established to provide for a compatible mix of agricultural and residential uses. Clearly our intent is to protect and provide agricultural uses and preserve the rural character of the neighborhood as well as providing for natural buffers. This district has an abundant supply of vacant land some of which possesses panoramic views and as such is subject to residential development pressures. Home occupations and recreational uses are generally permissible as well as numerous service and retail businesses. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Mobile homes — in accordance with § 300-59

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Duplex — attached

Agricultural buildings

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Municipal office

Day-care center — over five persons — in accordance with § 300-67

Limited day care — four or less persons

Public park

Swimming pool — private — in accordance with § 300-82

Riding academy/stable

Garage — accessory

Customary accessory use

Storage structures — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

Temporary mobile home — noninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

Homes for the aged

Nursing home/rest home

Multiple dwellings — attached — in accordance with § 300-40

Mobile home parks — in accordance with § 300-60

Cluster residential development — in accordance with § 300-38

Mixed residential/commercial — in accordance with § 300-39

General agricultural business

Sawmill — commercial

Winery

* Household sale — in accordance with § 300-43

Antique shop

Bakery shop

Catalog store

Drugstore

Florist shop

Corner grocery store

Gift shop

Newsstand

Building materials store

Mobile home/trailer sales

Service station — gas sales — in accordance with § 300-81

Farm machinery/implements store

Feed and seed shop

Furniture/appliance store
Hardware/glass/paint store
Plumbing/heating shop
Rental store
Professional office — in accordance with § 300-75
Bank
Photography studio
Funeral home
Realty office
Dry-cleaning shop
Barber/beauty shop
Locksmith shop
Kennel business — in accordance with § 300-72
Animal shelter
Animal hospital
Boat storage business
Business office
Commercial storage
* Home occupation — in accordance with § 300-42
Gravel and sand operation — in accordance with § 300-54
Gas compressor — in accordance with § 300-55
Machine shop
Junk/scrap yard — in accordance with § 300-56
School-public/private
Airport/airstrip/heliport — in accordance with § 300-65
Library/museum/gallery
Church/rectory
Fraternal meeting facility
Large group gathering — in accordance with § 300-58
Cemetery/crematory
Golf course — private/public
Tennis court — private (accessory to dwelling)
Tennis court — public/commercial
Swimming pool — public/commercial
Commercial recreation
Recreation camp — public/quasi-public — in accordance with § 300-70
Travel trailer park — commercial — in accordance with § 300-63
Carnival/circus — temporary

Outdoor rifle range/skeet or gun club — quasi-public — in accordance with § 300-79

Indoor rifle/pistol range — quasi-public — in accordance with § 300-79

Fish hatchery/preserve

Wind energy facilities in accordance with § 300-83 [Amended 6-22-2007 by L.L. No. 3-2007]

* Solar system — in accordance with § 300-53

* Fences/walls — in accordance with § 300-51

Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter).

Agricultural land use

Animal farms (mink, etc.)

Horticulture — private

Roadside stand — limited — in accordance with § 300-44

* Household sale — in accordance with § 300-43

* Home occupation — in accordance with § 300-42

Wildlife habitat

Forestry/lumbering/reforestation

* Solar system — in accordance with § 300-53

Pond — in accordance with § 300-46

Topsoil removal — in accordance with § 300-66

Outdoor storage of recreational vehicle — in accordance with § 300-68

Parking — private — in accordance with § 300-48

Temporary dwelling units — in accordance with § 300-61

Junk cars/vehicles on private property — in accordance with § 300-84

Trash on private property — in accordance with § 300-71

* Fences/walls — in accordance with § 300-51

Heavy vehicle parking — in accordance with § 300-57

Gasoline/volatile fuel tank — in accordance with § 300-64

Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³⁶

36. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Agricultural/Residential (AR1)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—

	Agricultural/Residential (AR1)	
	Primary Use	Accessory Use
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—
Other uses (nonresidential)		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet)	—	—

§ 300-14. Agricultural/Residential (AR2) District.

- A. Purpose. AR2 Districts are established to provide for a compatible mix of agricultural and residential uses. Clearly, the intent is to protect and provide agricultural uses and preserve the rural character of the neighborhood as well as providing for natural buffers. This district has an abundant supply of vacant land some of which possesses panoramic views and as such is subject to residential development pressures. Home occupations and recreational uses are generally permissible. Retail uses are generally not allowed. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Duplex — attached

Agricultural buildings

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Municipal office

Day-care center — over five persons — in accordance with § 300-67

Limited day care — Four or less persons

Public park

Swimming pool — private — in accordance with § 300-82

Garage — accessory

Customary accessory use

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish/antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

Temporary mobile home — noninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

Mobile homes — in accordance with § 300-59

Homes for the aged

Cluster residential development — in accordance with § 300-38

Animal farms (mink, etc.) — in accordance with § 300-85

Roadside stands (general) — in accordance with § 300-44

* Household sale — in accordance with § 300-43

* Home occupation — in accordance with § 300-42

School — public/private

Church/rectory

Cemetery

Golf course — private/public

Tennis court — private (accessory to dwelling)

Tennis court — public/commercial

Swimming pool — public/commercial

Carnival/circus — temporary

* Solar system — in accordance with § 300-53

* Fences/walls — in accordance with § 300-51

Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter).

- Agricultural land use
- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- * Home occupation — in accordance with § 300-42
- Wildlife habitat
- Forestry/lumbering/reforestation
- * Solar systems — in accordance with § 300-53
- Ponds — in accordance with § 300-46
- Topsoil removal — in accordance with § 300-66
- Outdoor storage of recreational vehicle — in accordance with § 300-68
- Parking — private — in accordance with § 300-48
- Temporary dwelling units — in accordance with § 300-61
- Junk cars/vehicles on private property — in accordance with § 300-84
- Trash on private property — in accordance with § 300-71
- * Fences/walls — in accordance with § 300-51
- Heavy vehicle parking — in accordance with § 300-57
- Gasoline/volatile fuel tank — in accordance with § 300-64
- Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³⁷

	Agricultural/Residential (AR2)		Agricultural/Residential (AR2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Single-family units				
Minimum lot size (in acres)	2	—	1	—
Minimum front lot width (in feet)	200	—	100	—

37. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Agricultural/Residential (AR2)		Agricultural/Residential (AR2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—
Multiple-family units (standard)				
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—	1 acres + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—	760	—
Multiple-family units (elderly)				

	Agricultural/Residential (AR2)		Agricultural/Residential (AR2)	
	No Public Utilities		One Public Utility	
	Primary Use	Accessory Use	Primary Use	Accessory Use
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—	1 acres + 5,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—	600	—
Other uses (nonresidential)				
Minimum lot size (in acres)	2	—	2	—
Minimum front lot width (in feet)	200	—	200	—
Maximum lot coverage (% of lot area)	30%	—	30%	—
Minimum front yard (feet from street edge)	100	100	100	100
Minimum side yard (feet from property line)	10	10	10	10
Minimum rear yard (feet from property line)	25	25	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2	2 1/2	2 1/2
Minimum floor space (square feet)	—	—	—	—

§ 300-15. Neighborhood Business (B1) District (Floating).

- A. Purpose. The purpose of the B1 District is to promote retail and service uses which are vehicle oriented for the use of residents and visitors. At the same time, a major goal is to protect and enhance the community by encouraging aesthetically appealing business with safe ingress and egress and limiting strip development. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Duplex — attached

Agricultural building

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Municipal office

Limited day care — Four or less persons

Public park

Marinas/tackle shop

Garage — accessory

Customary accessory use

Parking — commercial lot — in accordance with § 300-48

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

- C. Uses by special use permit (hearing required).

Mobile homes — in accordance with § 300-59

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Homes for the aged

Nursing home/rest home

Multiple dwellings — attached — in accordance with § 300-40

Cluster residential development — in accordance with § 300-38

Mixed residential/commercial — in accordance with § 300-39

Animal farms (mink, etc.) — in accordance with § 300-85

Winery

- Nursery/greenhouse — commercial
- Roadside stand — general — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
 - Antique shop
 - Bakery shop
 - Drugstore
 - Florist shop
 - Corner grocery store
 - Gift shop
 - Monument sales
 - Newsstand
 - Service station — gas sales — in accordance with § 300-81
 - Feed and seed shop
 - Hardware/glass/paint store
 - Pet store
 - Plumbing/heating shop
 - Professional office — in accordance with § 300-75
 - Photography studio
 - Funeral home
 - Realty office
 - Dry-cleaning shop
 - Barber/beauty shop
 - Restaurant — in accordance with § 300-77
 - Bar
 - Locksmith shop
 - Building contractor business
 - Custom workshop
 - Appliance repair shop
- * Home occupation — in accordance with § 300-42
 - School — public/private
 - Day-care center — over five persons — in accordance with § 300-67
 - Library/museum/gallery — public
 - Church/rectory
 - Fraternal meeting facility
 - Tennis court — private (accessory to dwelling)
 - Tennis court — public/commercial
 - Swimming pool (private) — in accordance with § 300-82
 - Swimming pool — public/commercial
 - Indoor rifle/pistol range — quasi-public — in accordance with § 300-79

- * Solar system — in accordance with § 300-53
- * Signs — in accordance with § 300-50
- * Fences and walls — in accordance with § 300-51
- Temporary mobile home — noninhabited — in accordance with § 300-62

D. Uses requiring no permit (requires compliance with chapter).

- Agricultural land use
- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- * Home occupation — in accordance with § 300-42
- Wildlife habitat
- * Solar systems — in accordance with § 300-53
- Ponds — in accordance with § 300-46
- Topsoil removal — in accordance with § 300-66
- Outdoor storage of recreational vehicle — in accordance with § 300-68
- Parking — private — in accordance with § 300-48
- Temporary dwelling units — in accordance with § 300-61
- Junk cars/vehicles on private property — in accordance with § 300-84
- Trash on private property — in accordance with § 300-71
- * Fences/walls — in accordance with § 300-51
- Heavy vehicle parking — in accordance with § 300-57
- Gasoline/volatile fuel tank — in accordance with § 300-64
- Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.³⁸

	Neighborhood Business (B1) (Floating District)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—

38. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Neighborhood Business (B1) (Floating District)	
	Primary Use	Accessory Use
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	2 acres + 10,000	—
Minimum front lot width (base + feet per unit)	100 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25

	Neighborhood Business (B1) (Floating District)	
	Primary Use	Accessory Use
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—
Other uses (nonresidential)		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet)	—	—

§ 300-16. Highway Business (B2) District.

- A. Purpose. The purpose of the B2 District is to promote retail and service uses for the use of Cassadaga residents and visitors. At the same time, a major goal is to protect and enhance the community by encouraging aesthetically appealing businesses with safe ingress and egress and prohibiting chaotic strip development. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.
- B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Mobile homes — in accordance with § 300-59

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Duplex — attached

Multiple dwellings — attached — in accordance with § 300-40

Agricultural building

Nursery/greenhouse — commercial

Antique shop

Bakery shop
Catalog store
Drugstore
Florist shop
Corner grocery store
Gift shop
Monument sales
Newsstand
Liquor store
Auto sales/used car lot — in accordance with § 300-78
Farm machinery/implements store
Feed and seed shop
Furniture/appliance store
Hardware/glass/paint store
Pet store
Plumbing/heating shop
Rental store
Professional office — in accordance with § 300-75
Bank
Photography studio
Funeral home
Realty office
Dry-cleaning shop
Barber/beauty shop
Restaurant — in accordance with § 300-77
Bar
Locksmith shop
Custom workshop
Appliance repair shop
Kennel business — in accordance with § 300-72
Animal shelter
Animal hospital
Car wash
Boat storage business
Business office
Laundromat
Utilities (public) (e.g., water)
Utilities (quasi-public) (e.g., telephone)
Municipal office

- Limited day care — Four or less persons
- Public park
- Marinas/tackle shop
- Garage — accessory
- Customary accessory use
- Parking — commercial lot — in accordance with § 300-48
- Storage structure — in accordance with § 300-69
- * Signs — in accordance with § 300-50
- Open porch/deck
- Television dish antennas (over four-foot diameter) — in accordance with § 300-52
- Temporary mobile home — inhabited — in accordance with § 300-62
- Temporary mobile home — uninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

- Home for aged
- Nursing home/rest home
- Cluster residential development — in accordance with § 300-38
- Mixed residential/commercial
- General agricultural business
- Animal farms (mink, etc.) — in accordance with § 300-85
- Winery
- Roadside stand — general — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- Shopping center/mall — in accordance with § 300-41
- Food supermarket
- Building materials store
- Mobile home/trailer sales
- Service station — gas sales — in accordance with § 300-81
- Department/variety store
- Truck terminal
- Drive-in business — in accordance with § 300-45
- Hotel/motel
- Auto body repair shop — in accordance with § 300-80
- Vehicle repair shop — in accordance with § 300-80
- Building contractor business
- Commercial storage
- Wholesale business — warehouse

- Home occupation — in accordance with § 300-42
- Electronic and small parts manufacturing
- Vehicle dismantling/scrap yard — in accordance with § 300-56
- School — public/private
- Day-care center — over five persons — in accordance with § 300-67
- Library/museum/gallery — public
- Church/rectory
- Fraternal meeting facility
- Tennis court — private (accessory to dwelling)
- Tennis court — public/commercial
- Commercial recreation
- Swimming pool — private — in accordance with § 300-82
- Swimming pool — public/commercial
- Theater
- Carnival/circus — temporary
- Indoor rifle/pistol range — quasi-public
- * Solar system — in accordance with § 300-53
- * Signs — in accordance with § 300-50
- Load/unload facility — in accordance with § 300-49
- * Fences/walls — in accordance with § 300-51
- Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter).

- Agricultural land use
- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- * Home occupation — in accordance with § 300-42
- Wildlife habitat
- * Solar system — in accordance with § 300-53
- Ponds — in accordance with § 300-46
- Topsoil removal — in accordance with § 300-66
- Outdoor storage of recreational vehicle — in accordance with § 300-68
- Parking — private — in accordance with § 300-48
- Temporary dwelling units — in accordance with § 300-61
- Junk cars/vehicles on private property — in accordance with § 300-84
- Trash on private property — in accordance with § 300-71

- * Fences/walls — in accordance with § 300-51
- Heavy vehicle parking — in accordance with § 300-57
- Gasoline/volatile fuel tank — in accordance with § 300-64
- Junk farm vehicles — in accordance with § 300-84

E. Area standards: See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer. [Amended 6-9-1999 by L.L. No. 1-1999³⁹]

	Highway Business (B2)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	1	—
Minimum front lot width (in feet)	100	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	1 acre + 5,000	—
Minimum front lot width (base + feet per unit)	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25

39. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Highway Business (B2)	
	Primary Use	Accessory Use
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	1 acre + 5,000	—
Minimum front lot width (base + feet per unit)	100 + 5	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—
Other uses (nonresidential)		
Minimum lot size (in acres)	1 acre if served by municipal water and sewer; otherwise 2 acres	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet)	—	—

§ 300-17. Industrial Park (I1) District.

A. Purpose. I1 Districts have the purpose of promoting a variety of wholesale and industrial uses not associated with nuisances or large utility systems. A major goal is to protect and enhance the community by encouraging aesthetically appealing businesses with safe ingress and egress and prohibiting chaotic strip development. Most agricultural and residential uses are allowed in order to provide reasonable alternatives prior to industrial development. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.

B. Uses by right (permit required).

Agricultural buildings

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Municipal office

Limited day care

Public park

Garage — accessory

Customary accessory use

Parking — commercial lot — in accordance with § 300-48

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

Temporary mobile home — noninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

Boarding homes/bed-and-breakfast — in accordance with § 300-74

Duplex — attached

Single-family dwelling — detached (conventional, prefab., modular)

Mobile homes — in accordance with § 300-59

Homes for the aged

Nursing home/rest home

Multiple dwellings — attached — in accordance with § 300-40

Cluster residential development — in accordance with § 300-38

General agricultural business

Animal farms (mink, etc.) — in accordance with § 300-85

- Sawmill — commercial
- Winery
- Nursery/greenhouse — commercial
- Roadside stand — general — in accordance with § 300-44
- Fruit processing plant
- * Household sale — in accordance with § 300-43
- Wholesale business — warehouse
- Storage of materials/fuel — warehouse
- * Home occupation — in accordance with § 300-42
- Electronic and small parts manufacturing
- Laboratory and research (commercial)
- Gravel and sand operation — in accordance with § 300-54
- Manufacturing — general
- Manufacturing of food products
- Machine shop
- School — public/private
- Airport/airstrip/heliport — in accordance with § 300-65
- Day-care center — over five persons — in accordance with § 300-67
- Library/museum/gallery
- Church/rectory
- Carnival/circus — temporary
- Windmills — private — in accordance with § 300-83
- * Solar system — in accordance with § 300-53
- * Signs — in accordance with § 300-50
- Loading/unloading facility — in accordance with § 300-49
- * Fences/walls — in accordance with § 300-51
- Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter).

- Agricultural land use
- Horticulture — private
- Roadside stand — limited — in accordance with § 300-44
- * Household sale — in accordance with § 300-43
- * Home occupation — in accordance with § 300-42
- Wildlife habitat
- * Solar system — in accordance with § 300-53
- Ponds — in accordance with § 300-46

Topsoil removal — in accordance with § 300-66

Outdoor storage of recreational vehicle — in accordance with § 300-68

Parking — private — in accordance with § 300-48

Temporary dwelling units — in accordance with § 300-61

Junk cars/vehicles on private property — in accordance with § 300-84

Trash on private property — in accordance with § 300-71

* Fences/walls — in accordance with § 300-51

Heavy vehicle parking — in accordance with § 300-57

Gasoline/volatile fuel tank — in accordance with § 300-64

Junk farm vehicles — in accordance with § 300-84

E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.⁴⁰

	Industrial District (I1)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	2 acres + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—

40. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

	Industrial District (I1)	
	Primary Use	Accessory Use
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	2 acres + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—
Other uses (nonresidential)		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	60%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	3	3

	Industrial District (I1)	
	Primary Use	Accessory Use
Minimum floor space (square feet)	—	—

§ 300-18. Industrial (I2) District.

A. Purpose. I2 Districts have a primary goal of promoting industrial uses and strictly limiting residential uses. Agricultural land use is permitted along with limited retail and service uses which are also allowed in order to provide alternative uses during the interim development stages. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.

B. Uses by right (permit required).

Single-family dwelling — detached (conventional, prefab., modular)

Agricultural buildings

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Municipal office

Limited day care — four or less persons

Public park

Garage — accessory

Customary accessory use

Parking — commercial lot — in accordance with § 300-48

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

Temporary mobile home — noninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

General agricultural business

Animal farms (mink, etc.) — in accordance with § 300-85

Sawmill — commercial

Nursery/greenhouse — commercial

Fruit processing plant

* Household sale — in accordance with § 300-43

- Monument sales
- Building materials store
- Mobile home/trailer sales
- Farm machinery/implements store
- Food and seed shop
- Plumbing/heating shop
- Soil reclamation and commercial composting
- Truck terminal
- Autobody repair shop — in accordance with § 300-80
- Vehicle repair shop — in accordance with § 300-80
- Building contractor business
- Custom workshop
- Appliance repair shop
- Boat storage business
- Business office
- Soil reclamation/commercial composting
- Commercial storage
- Wholesale business — warehouse
- Storage of materials/fuel — warehouse
- Home occupation — in accordance with § 300-42
- Electronic and small parts manufacturing
- Laboratory and research (commercial)
- Gravel and sand operation — in accordance with § 300-54
- General heavy industry
- Manufacturing — general
- Manufacturing of food products
- Machine shop
- School — public/private
- Airport/airstrip/heliport — in accordance with § 300-65
- Day-care center — over five persons — in accordance with § 300-67
- Library/museum/gallery
- Church/rectory
- Carnival/circus — temporary
- Indoor rifle/pistol range — quasi-public — in accordance with § 300-79
- Windmills — private — in accordance with § 300-83
- * Solar system — in accordance with § 300-53
- * Signs — in accordance with § 300-50
- Loading/unloading facility — in accordance with § 300-49
- * Fences/walls — in accordance with § 300-51

Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter).

Agricultural land use

Horticulture — private

Roadside stand (limited) — in accordance with § 300-44

* Household sale — in accordance with § 300-43

* Home occupation — in accordance with § 300-42

Wildlife habitat

* Solar system — in accordance with § 300-53

Ponds — in accordance with § 300-46

Topsoil removal — in accordance with § 300-66

Outdoor storage of recreational vehicle — in accordance with § 300-68

Parking — private — in accordance with § 300-48

Temporary dwelling units — in accordance with § 300-61

Junk cars/vehicles on private property — in accordance with § 300-84

Trash on private property — in accordance with § 300-71

* Fences/walls — in accordance with § 300-51

Heavy vehicle parking — in accordance with § 300-57

Gasoline/volatile fuel tank — in accordance with § 300-64

Junk farm vehicles — in accordance with § 300-84

E. Area standards: See Article V, General Provisions, § 300-24 for substandard lots.⁴¹

	Industrial District (I2)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10

41. Editor's Note: Amended at time of adoption of Code (see Ch. I, General Provisions, Art. I).

	Industrial District (I2)	
	Primary Use	Accessory Use
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (standard)		
Minimum lot size (base + square feet per unit)	2 acres + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Multiple-family units (elderly)		
Minimum lot size (base + square feet per unit)	2 acres + 5,000	—
Minimum front lot width (base + feet per unit)	200 + 10	—
Maximum lot coverage (% of lot area)	30%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (base + feet per unit)	10 + 1	10 + 1
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	600	—

	Industrial District (I2)	
	Primary Use	Accessory Use
Other uses (nonresidential)		
Minimum lot size (in acres)	2	—
Minimum front lot width (in feet)	200	—
Maximum lot coverage (% of lot area)	60%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	10	10
Minimum rear yard (feet from property line)	25	25
Maximum structure height (number of stories)	3	3
Minimum floor space (square feet)	—	—

§ 300-19. Conservation (C1) District.

A. Purpose. C1 Districts are established to provide protection for the preservation of natural features of a municipality such as gorges, watersheds, wetlands, open space, recreation areas, etc. Large lot residential uses are allowed along with some agricultural uses. Note: Uses marked with an asterisk (*) are allowed by two or more types of permits (by right, special use or no permit) and the supplemental section referred to should be consulted in each case to fully understand which permit applies.

B. Uses by right (permit required).

Agricultural buildings

Nursery/greenhouse — commercial

Utilities (public) (e.g., water)

Utilities (quasi-public) (e.g., telephone)

Limited day care — four or less persons

Public park

Recreation camp — private — in accordance with § 300-70

Garage — accessory

Customary accessory use

Storage structure — in accordance with § 300-69

* Signs — in accordance with § 300-50

Open porch/deck

Television dish/antenna — in accordance with § 300-52

Temporary mobile home — inhabited — in accordance with § 300-62

Temporary mobile home — noninhabited — in accordance with § 300-62

C. Uses by special use permit (hearing required).

Single-family dwelling — detached (conventional, prefab., modular)

Mobile homes — in accordance with § 300-59

Cluster residential development — in accordance with § 300-38

Household sale — in accordance with § 300-43

School — public/private

Day-care center — over five persons — in accordance with § 300-67

Church/rectory

Carnival/circus — temporary

Outdoor rifle range/skeet or gun club — quasi-public — in accordance with § 300-79

Indoor rifle/pistol range — quasi-public — in accordance with § 300-79

Forestry/lumbering/reforestation

Fish hatchery/preserve

Windmills — private — in accordance with § 300-83

* Solar system — in accordance with § 300-53

* Fences/walls — in accordance with § 300-51

Television/radio tower — commercial — in accordance with § 300-83

D. Uses requiring no permit (requires compliance with chapter). **[Amended 12-9-1998 by L.L. No. 3-1998]**

Agricultural land use

Animal farms (mink, etc.)

Horticulture — private

Roadside stand — limited — in accordance with § 300-44

* Household sale — in accordance with § 300-43

* Home occupation — in accordance with § 300-42

Wildlife habitat

* Solar system — in accordance with § 300-53

Ponds — in accordance with § 300-46

Parking — private — in accordance with § 300-48

- E. Area standards. See the following sections: § 300-24, Existing substandard sized lots, and § 300-28, Established front yards, and municipal water and sewer.⁴¹

	Conservation District (C1)	
	Primary Use	Accessory Use
Single-family units		
Minimum lot size (in acres)	5	—
Minimum front lot width (in feet)	300	—
Maximum lot coverage (% of lot area)	10%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	25	25
Minimum rear yard (feet from property line)	50	50
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet of living space)	760	—
Other uses (nonresidential)		
Minimum lot size (in acres)	5	—
Minimum front lot width (in feet)	300	—
Maximum lot coverage (% of lot area)	10%	—
Minimum front yard (feet from street edge)	100	100
Minimum side yard (feet from property line)	25	25
Minimum rear yard (feet from property line)	50	50
Maximum structure height (number of stories)	2 1/2	2 1/2
Minimum floor space (square feet)	—	—

F. Prohibited area. [Added 12-9-1998 by L.L. No. 3-1998]

- (1) Notwithstanding any other provision in this section, no building or structure of any type will be allowed within 550 feet of the high water mark of the Village of Fredonia Public Water Reservoir.

41. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (2) The Zoning Board of Appeals, however, by special permit application may permit a nonhabitable agricultural structure only within the prohibited area but not closer than 300 feet to the high water mark of the Village of Fredonia Public Water Reservoir. The special permit application shall comply with all other provisions of this Zoning Chapter.
- G. In any application for a permit in the Conservation (C1) District located within an area bordered generally on the north by the lands of the Niagara Mohawk Power Corporation right-of-way, on the east by Spoden Road, on the south by the Darby Switch Road, and on the west by the Fredonia-Stockton Road it shall be the burden of the petitioner to demonstrate by competent, objective proof satisfactory to the Code Enforcement Officer that any proposed building or structure will not be within 550 feet of the high water mark of the Village of Fredonia Public Reservoir. Competent, objective proof shall include, but not be limited to, a survey or drawing signed and sealed by a licensed surveyor or engineer showing the location of the building or structure and its proximity to the high water mark of the Village of Fredonia Public Water Reservoir. [Added 12-9-1998 by L.L. No. 3-1998]

ARTICLE V General Provisions

§ 300-20. Access to public street.

Except as otherwise provided for in this chapter, every building shall be constructed or erected upon a lot or parcel of land which abuts upon a public street unless a permanent public easement of access to a public street was of record prior to the adoption of this chapter. However, this shall not preclude the creation of a private road on a fifty-foot right-of-way which connects to a public road and serves five or more subdivided lots. Upon request from a developer, landowner(s), etc., the Municipal Board shall consider the takeover of a private roadway, but only after assurances are received by all involved parties that the roadway will be constructed to standards specified by the municipality. The municipality is in no way obligated to take over any road even if it meets specified road construction standards. Where less than five lots are involved, a legal right-of-way of any width shall be required to connect all lots to a public road when said lots do not abut a public road.

§ 300-21. Contiguous parcels.

When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one lot for such use.

§ 300-22. Corner lots.

Both street sides of a corner lot shall be treated as front yards in the application of bulk and area requirements and parking.

§ 300-23. Height.

- A. The height limitation of this chapter shall not apply to church spires, belfries, cupolas, silos, penthouses (equipment building on flat roof), and domes not used for human occupancy; nor to chimneys, ventilators, skylights, windmills, water tanks, bulkheads, similar features, and necessary mechanical appurtenances usually carried above the roof level. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve and shall not exceed in cross-sectional area 20% of the ground floor area of the building.
- B. The provisions of this chapter shall not apply to prevent the erection above the building height limit of a parapet wall or cornice for ornament (and without windows) extending above such height limit not more than five feet.

§ 300-24. Existing substandard sized lots.

The minimum area requirements specified for each type of allowed use shall not prevent the construction of an allowable use on a substandard sized lot less than two acres in size which existed and was officially recorded at the time of enactment of this Zoning Chapter if the following conditions are met:

- A. At the time of enactment of this chapter, the substandard lot was not contiguous with another lot in the same ownership (see § 300-21, Contiguous parcels, in Article V).
- B. The substandard lot is not less than 75% of all of the applicable standards.
- C. The County Health Department approves the lot where there are no municipal utilities.
- D. If Subsection B cannot be met but Subsection C has been accomplished, then the applicant can request an area variance from the Zoning Board of Appeals (see § 300-102, Use and area variances).

§ 300-25. Visibility at intersections.

For the purpose of maintaining sight lines and promoting traffic safety, on a corner lot in any district, no fence, wall, hedge, or other structure or planting more than three feet in height shall be erected or placed within the triangular areas formed by the intersecting street edge lines and the imaginary straight line down between the points 25 feet from the intersecting street edge lines along the street edge lines.

§ 300-26. Interpretation of permitted uses.

When a use is not specifically listed as a "use by right" or a "use by special use permit" within any zoning district, it shall be assumed to be a prohibited use unless it is determined in a written decision by the Board of Appeals that said use is similar to permitted uses, meets the intent specified in the zoning districts, and is not inherently a nuisance, menace or danger to the health, safety or welfare of the residents of the municipality.

§ 300-27. Preserving yards, courts and open space.

- A. Preservation of yards, courts and open space. Rear yards, courts and other open space shall be kept undeveloped in order to meet setback and coverage requirements of this chapter except as specified in Subsection B below.
- B. Permitted obstructions. The following shall not be considered to be obstructions when located in the preserved yards, courts and open space:
 - (1) Open terraces, patios, awnings and canopies, chimneys, trellises, flag poles, open fire escapes, decks, balconies and other similar uses which do not extend more than 40% of the required setback nor come closer to a lot boundary line by more than 40% of the required setback; and
 - (2) Bay windows, steps, chimneys, overhanging eaves and gutters and other similar uses shall not extend more than three feet from the principal structure nor come within two feet of any property lines.
- C. Location. All yards, courts and open space shall be located on the same undivided lot as the structure for which the setback and area requirements are required. Refer to Article V, General Provisions, § 300-21, Contiguous parcels, and § 300-29, Number of residential dwellings on a lot.

§ 300-28. Established front yards. [Amended 6-13-2007 by L.L. No. 2-2007]

In an existing R1, R2 or R3 neighborhood, where structures are not set back from the edge of the road at the distance specified by this chapter, it shall be determined by the Enforcement Officer what appropriate setback will be permitted by new construction or by alterations to existing structures in order to aesthetically blend with existing adjacent structures. The varied setback will be based on the average of the setbacks of the two adjacent structures minus up to five feet. Any variation requested which is in greater variation than that permitted by this rule will require an area variance.

§ 300-29. Number of residential dwellings on lot; lot division.

- A. Number of residential dwellings on a lot. No more than one principal detached residential dwelling shall be constructed on a lot.
- B. Division of lots. No lot improved with a building or buildings shall hereafter be divided into two or more zoning lots, and no portion of any zoning lot which is improved with a building or buildings shall be sold, unless all zoning lots resulting from each such division or sale and improved with a building or buildings shall not be less conforming to all the bulk regulations of the zoning district in which the property is located. However, any portion of a parcel may be removed if it is to be used with an adjacent parcel and the original parcel continues to conform to the bulk regulations.

§ 300-30. Driveways within rights-of-way.

When property to be developed fronts on a highway and access to the highway is desired, an approved permit from the applicable agency for the development of such highway access shall be presented. The Highway/Street Superintendent may require the installation of an appropriately sized sluice pipe where it is likely that drainage problems exist or may be created by the presence of a driveway on a public right-of-way.

§ 300-31. Agriculture. ⁴²

- A. Agricultural preservation. In order to promote, preserve and protect agricultural business, any portion of this chapter that would reduce operational capability of an agricultural business shall be waived in that one instance. However, where a documented health or safety problem exists or would be created if sections of this chapter were not adhered to, then, these sections will be enforced, but even then only to the minimum necessary. Determination or interpretations shall be made by the Zoning Board of Appeals.
- B. Manure piles. Manure piles may not be located within 200 feet of any neighboring water well on adjacent or nearby lots and must comply with the Chautauqua County Sanitary Code.

§ 300-32. Transition between districts.

- A. Purpose. The purpose of this section is to promote harmonious use of land located at district boundaries.
- B. Conditions. Where the permitting board determines there is a need to protect a residential neighborhood located in a residential district from a permitted use in an adjacent district, the Board may:
 - (1) Require an artificial or natural buffer such as a hedge, fence, wall, etc., which shields the residential units from the business use;
 - (2) Require a doubling of the yard setback requirements to protect the neighborhood;
 - (3) Control the positioning of signs, lights, parking mechanical equipment, and any other features so as to reduce the potential nuisance; or
 - (4) Impose other appropriate requirements.
- C. Preexisting uses. This section shall only apply to new construction to include additions and enlargements.

42. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 300-33. Disputed lot lines.

- A. Purpose. It is the intent of this section to clarify the procedures to be followed in verifying where lot lines are in order to insure that area requirements (side yards, etc.) are met.
- B. Procedures. When the Enforcement Officer is in doubt as to the location of lot lines and it is apparent that new development may not be in accordance with area requirements, the Enforcement Officer shall withhold the granting of the zoning permit until one of the following occurs:
- (1) Applicant provides proof such as a survey accomplished by a licensed surveyor.
 - (2) Refer the matter to the Zoning Board of Appeals for an interpretation of documentation provided by the applicant.
 - (3) Grant zoning permit after the applicant receives an area variance from the Zoning Board of Appeals.

§ 300-34. Lots in two districts.

Where a district boundary divides a parcel at the time of enactment of this chapter, the regulations for the district shall conform to the district boundary map. A use variance may be requested in accordance with Article IX, Zoning Board of Appeals.

§ 300-35. Business entrances on residential streets.

- A. Purpose. To preserve the residential character of neighborhoods which abut business districts, the regulations which follow shall apply to all businesses which are adjacent to a residential district and have both access to a primary business street and primary residential street.
- B. Regulations.
- (1) Store entrance. Business structures erected in the business district shall not face and open onto the street which is primarily in the residential district.
 - (2) Display windows. Primary display windows shall front on the primary business street and not the primary residential street.
 - (3) Parking. Off-street parking for use by business patrons shall be situated so that the access is from the primary business street.
 - (4) Signs. Business signs shall be oriented toward the primary business street.
 - (5) Lighting. All lighting fixtures associated with the business shall be oriented away from the residential district.

§ 300-36. Buffer zones.

The Zoning Board of Appeals and Planning Board shall include in their analysis of application (variances, special use permits, etc.) a consideration for the need of an appropriate buffer zone. If such a barrier is deemed necessary, then this condition will be included in the written decision and the Zoning Officer shall insure that appropriate vegetation is planted or other man-made structure is installed within a reasonable time after completion of the construction.

ARTICLE VI
Supplemental Regulations

§ 300-37. General development conditions.

- A. Purpose. Development conditions shall be attached to permits or variances when necessary or advisable to reduce or eliminate conflicts between uses or to protect the health, safety and general welfare.
- B. Areas of concern. The following checklist shall be considered by the appropriate Board and administrators in their reviews of request for building permits, special use permits and variances. The checklist is not intended to be all-inclusive and does not limit the areas of concern over which conditions may be imposed.
 - (1) Traffic. Safety of ingress/egress from roadway, intersection visibility, level of anticipated new traffic generation in relation to existing road capacity and traffic, adequacy of off-street parking and loading, pedestrian safety, and/or location of structures in relation to all of the above.
 - (2) Safety. Trash disposal, steep slopes, open pits, toxic and/or flammable fluids.
 - (3) Health. Sewers/water, sunlight, air movement, junk vehicles and/or trash storage.
 - (4) Character of neighborhood. Development density, traffic volume, lot sizes, compatible uses and/or buffers.
 - (5) Public costs. Road damage, need for new roads and/or need for new utilities.
 - (6) Environmental protection. Floodplain, wetlands and/or natural features.
 - (7) Nuisances. Noise, odor, dust, lights, hours of operation, lot size, buffers and/or nuisance location.
 - (8) Land use preservation. Agriculture and/or open space.
 - (9) Aesthetics. Restoration, appearance, scenic views and/or buffers.
- C. Failure to comply. Applicants who have received variances or special use permits with conditions attached shall be responsible for continual compliance with the specified conditions. Noncompliance with any condition shall result in revocation of the variance/special use permit, and continuance of the use shall only be allowed after reapplication for the variance/special use permit.

§ 300-38. Cluster residential development.

A. Purpose. Cluster residential provisions for single-family subdivisions and attached multiple-family projects are intended to allow flexibility where desirable to permit and encourage superior development of relatively large undeveloped sites; development aims may include the preservation of views or natural features, provision of amenities for common use, including recreational facilities not feasible on individual lots, and innovative groups of dwellings which will provide desirable variety in the municipal housing stock. To carry out this purpose, standards for individual lot area and dimensions may be reduced from the standards of the district in which the cluster is located, if compensating permanent common area ancillary to the dwelling units is provided.

B. Standards for development of single-family clustered subdivision.

- (1) A cluster single-family residential development shall not be less than five acres of contiguous undeveloped area under single ownership.⁴⁴
- (2) Uses permitted shall be limited to the residential uses permitted in the district in which the cluster development is located.
- (3) An approved municipal or community sewage system and water system must be utilized.
- (4) Maximum permitted reductions in individual lot standards. Any lot in a cluster development may be reduced from the standards of the district in which it is located by the following or lesser amounts:
 - (a) Minimum lot area may be reduced by up to 25% of the required area.
 - (b) Minimum lot width may be reduced by up to 25%.
 - (c) Minimum yard requirements (front, side and rear) may be reduced up to 25% where the lots are not adjacent to an existing public roadway.
- (5) Compensating permanent common area ancillary to the dwelling units shall consist of all land and recreational areas held in common by the owners of the dwelling units in the development. This shall include but not be limited to private streets, parking areas, utility systems, parks, buffer areas, recreational areas to include tennis courts, pools, golf courses, storage areas, and wetlands. Permanent common areas shall be legally set aside and developed for the common use and enjoyment of all residents of the cluster development and appropriate convenient access shall be provided.
- (6) Compensating permanent common area shall equal or exceed 100% of the total of individual lot area reductions, thus there shall be no overall increase in density.
- (7) Applicable general provisions and supplemental regulations of this chapter shall apply to all cluster residential development.

44. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (8) Clustering regulations may be mandated by the permitting board if they decide that clustering will be beneficial to the municipality and developer.
- C. Standards for development of clustered multiple attached dwellings (apartments, condominiums, townhouses).
- (1) A cluster multiple-family residential development shall not be less than five acres of contiguous undeveloped area under single ownership.
 - (2) Multiple dwellings (attached) shall be listed as an allowable use in the district in which the project is proposed.
 - (3) An approved municipal or community sewage and water system must be utilized.
 - (4) The per acre density may be increased up to 10% over that specified in the area requirements for the district as long as the overall density of the project is maintained at or below the maximum allowed. This is accomplished by setting aside common areas as defined below.
 - (5) Compensating permanent common area ancillary to the dwelling units shall consist of all land and recreational areas held in common by the owners of the dwelling units in the development. This shall include but not be limited to private streets, parking areas, utility systems, parks, buffer areas, recreational areas to include tennis courts, pools, golf courses, storage areas, and wetlands. Permanent common areas shall be legally set aside and developed for the common use and enjoyment of all residents of the cluster development and appropriate convenient access shall be provided.
 - (6) Applicable "general provisions" and "supplemental" sections of this chapter shall apply to all cluster residential development.
- D. Application and procedures for establishing a cluster residential development.
- (1) Application for establishing a cluster residential development shall be made to the Zoning Enforcement Officer who shall refer the application to the Municipal Board and Planning Board.
 - (2) The application shall include:
 - (a) Names and addresses of owner and developer.
 - (b) Written statements concerning need for development and suitability of site, potential impact on abutting properties and the neighborhood, development schedule for private and common areas, method of disposition of common areas, including pertinent documents regarding owner's association or other organization and long-term maintenance, estimates of annual maintenance costs, other pertinent information.
 - (c) Location map drawn to scale of not less than one inch equals 1,000 feet showing subject parcel, existing and proposed access streets and nature of abutting development.

- (d) Overall development plan drawn to scale of one inch equals 10 feet with contour interval of two feet, showing exact size and shape of the subject parcel, natural features to be preserved, proposed residential lots and their dimensions, internal and surrounding streets and all other provisions for pedestrian and vehicular access and circulation, off-street parking and loading areas, utility rights-of-way or installations on or near the property, location, dimensions and area of proposed open space or other commonly held facilities which are part of the compensating permanent common area, comparison of total area of residential lot reduction with total area of common area, nature and location of public or private utilities which would serve the residential cluster.
- (e) Preliminary landscaping and drainage plans at a scale of one inch equals 10 feet with two-foot contour intervals; and/or
- (f) Preliminary architectural and engineering drawings to show the nature of residential and open space or recreational facilities proposed.

E. Action by Municipal (permitting) Board and Planning Board.

- (1) The permitting board will review and rule on the application for a cluster residential development expeditiously as practical and in no case later than 90 days after all information required for the application is received. The Planning Board shall make a recommendation to the permitting board in accordance with Article X, Municipal Planning Board.
- (2) The Boards will consider:
 - (a) Need for development and suitability of site;
 - (b) Impact on the neighborhood, circulation system, and municipality as a whole;
 - (c) Feasibility and practicality of providing and maintaining common areas, including costs to prospective homeowners;
 - (d) Need for complete disclosure to prospective buyers of future costs and responsibilities in connection with common areas;
 - (e) Need to require performance bond if nature of development warrants; and
 - (f) Other factors which affect the visibility of the proposal and the general welfare of the municipality.
- (3) The permitting board may request preliminary meetings with the applicant to provide additional information or explain the proposal.
- (4) The permitting board may hold an informational meeting in addition to a required public hearing to receive local opinion and reaction and shall make information concerning the proposal available to the public before such meeting.

§ 300-39. Mixed residential/commercial uses in B1/B2 District.

Commercial structures (preexisting and new) located within a retail section of a commercial district may, by special use permit, be partially used for dwelling purposes when the following conditions are met:

- A. Location in structure. All such dwellings shall be located on the second or third floor.
- B. Location. The location is appropriate for housing units with respect to health, safety and general welfare of the occupants.
- C. Parking. Sufficient off-street parking is available, preferably on the parcel where the structure is located or in close proximity to the structure.
- D. Other conditions. Other reasonable conditions as deemed necessary.

§ 300-40. Multiple dwellings.

- A. Purpose. Attached multiple dwellings in districts where allowed shall be subject to special use permits and where three or more units are proposed, site plan review requirements shall also apply. Each development proposal shall be evaluated on its own merits with reasonable conditions attached.
- B. Conditions. The following shall be considered where appropriate for inclusion.
 - (1) Special use permit conditions.
 - (a) Safe ingress and egress.
 - (b) Roadway ownership and design. Insure roadways and fire lanes are adequate for year-round fire equipment movement.
 - (c) Parking in accordance with the supplemental section, § 300-48, and additionally, auxiliary parking.
 - (d) Storage facilities such that adequate indoor storage is available. See supplemental sections, §§ 300-68 and 300-69.
 - (e) Utilities to include sewer, water, telephone, electric, cable TV, etc. See supplemental section on TV dishes, § 300-52.
 - (f) Common property ownership and the creation of an owner's association.
 - (g) Sign size, location, lighting, etc. See supplemental section on signs, § 300-50.
 - (h) Recreational uses, active and passive.
 - (i) Buffers, natural and man-made, as necessary.
 - (j) Clustering of development as specified in the area requirements.

- (k) Other reasonable and appropriate conditions as deemed necessary by the permitting board. See supplemental section on development conditions, § 300-37.

- (2) Site plan review conditions. See site plan review section, § 300-108.

§ 300-41. Shopping center.

A. Purpose. Commercial shopping centers or malls in districts where allowed shall be subject to special use permits, and where 5,000 or more square feet of floor space is being proposed, site plan review requirements shall also apply. Each development proposal shall be evaluated on its own merits with reasonable conditions attached.

B. Conditions. The following shall be considered for inclusion, where appropriate.

- (1) Special use permit conditions.

- (a) Safe ingress and egress.

- (b) Alleys, fire lanes, and all other means of fire equipment movement shall be adequate for year-round movement.

- (c) Dry hydrants shall be required where year-round access to pond, stream or other source of water for fighting fires is not available.

- (d) Sufficient parking in accordance with the supplemental section on parking, § 300-48.

- (e) Loading and unloading spaces in accordance with the supplemental section on loading, § 300-49.

- (f) Signs shall be in conformance with the supplemental section on signs, § 300-50.

- (g) Buffers, either natural or man-made, shall be required where a conflict of uses needs to be reduced to acceptable levels.

- (h) Trash should be handled in accordance with the supplemental section on trash.

- (i) Other reasonable and appropriate conditions as deemed necessary by the permitting board. See supplemental section on development conditions, § 300-37.

- (2) Site plan review conditions. See site plan review section, § 300-108.

§ 300-42. Home occupations.

A. Purpose. To preserve the residential character of neighborhoods, home occupations shall be controlled to various degrees dependent upon the density of development of a neighborhood and the planned use of the area as designated by the zoning district.

B. Applicability.

District Name	Distance in Feet From Home Occupation to Adjacent Owners Parcel	Most Limited	Limited	Moderately Limited	Least Limited
R1, R3, C1	0+	X			
R2	Less than 100	X			
	100+		X		
AR2	Less than 50	X			
	50 to 149		X		
	150+			X	
AR1	Less than 50		X		
	50 to 149			X	
	150+				X
B1 and B2	Less than 20		X		
	20 to 49			X	
	50+				X
I1 and I2	Less than 50			X	
	50+				X

C. Conditions.

Condition	Category of Home Occupation			
	Most Limited	Limited	Moderately Limited	Least Limited
Floor area maximum (% of living space)	10%	15%	20%	25%
Use of accessory building existing building only	No	No	Yes	Yes
New building	No	No	No	Yes
Use of land outside of structure (% lot)	0%	0%	0%	1%
Use of nonhousehold equipment	No	No	Yes	Yes
On-premises sale of goods to client	No	Yes	Yes	Yes

Condition	Category of Home Occupation			
	Most Limited	Limited	Moderately Limited	Least Limited
On-premises service to client	No	Yes	Yes	Yes
Maximum number clients at one time	0	1	3	No limit
Number of employees (nonfamily)	0	1	2	3
Outside display of goods	No	No	Yes	Yes
Signs allowed	No	Yes	Yes	Yes
Location	On dwelling	On dwelling	Anywhere	
Size (square feet)		5	15	25
Number		1	1	2
Hours of operation may be specified	Yes	Yes	Yes	Yes
Parking required (sufficient for peak demand)	None	Yes	Yes	Yes
Minimum spaces required	0	1	2	3
Effects on character neighborhood (nuisances, etc.)	None	Minimal	Minimal	Some
Permit required	None	Special use	Special use	Special use

- D. Preexisting home occupations. Home occupations legally existing at the time of enactment of this chapter shall not generally be required to comply with the above conditions. However, where there is clear evidence that a nuisance is present due to an increased level of activity or a substantial change in the nature of the home occupation, then the use shall be subject to Town of Pomfret zoning regulations and any of the above conditions may be imposed on the use where reasonably possible. Compliance shall take place within the period specified by the permitting board but shall be no less than six months.⁴⁵

§ 300-43. Household sales.

- A. Purpose. In order to preserve the character of neighborhoods, garage and other similar type of noncommercial sales (lawn sales, household sales, flea market, etc.) shall be subject to the following conditions.
- B. Conditions.

⁴⁵ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) Frequency. Sales shall be limited to three periods of three days each per year per property owner.
- (2) Signs. Refer to supplemental sign section, § 300-50.
- (3) Fees. No fees shall be charged for household sales and permits are not required.

§ 300-44. Seasonal roadside stands.

- A. Purpose. In order to minimize traffic safety problems associated with retail sales at roadside stands, the following regulations shall apply.
- B. Definition. For the purposes of this chapter, roadside stands shall consist of two types, general roadside stand and limited roadside stand.
 - (1) General roadside stand. Produce sold but not necessarily grown on premises where stand is located.
 - (2) Limited roadside stand. All produce grown on the premises (lots) where the stand is located and are sold only by the owner(s) of said premises. Also, the stand may only be located at the sales location during the produce sales season.
- C. Minimum conditions.

	Limited Standards	General Standards
Type standard construction	Removable	Permanent
Year-round operation possible	No	Yes
Some produce from off premises	No	Yes
Employees other than owner and relatives	No	Yes
Type permit	None	Special use
Requires safe entry and exit with good "line of sight"	Yes	Yes
Sufficient off-street parking to cover peak periods	Yes	Yes
Signs allowed in accordance with sign section, § 300-50	Yes	Yes
Maximum sign size (square feet)	16	100
Hours of operation specified	No	Yes
Section 300-37 conditions can be imposed	No	Yes

- D. Preexisting roadside stands. All stands utilized in the twenty-four-month period prior to the effective date of this chapter shall be exempt from all regulations found in this

section. However, any expansion or alterations shall be subject to regulations of this section.

§ 300-45. Drive-in business.

- A. Purpose. Traffic safety shall be the primary purpose in designing drive-in businesses.
- B. Definition. As used in this chapter, the following terms shall have the meanings indicated:

DRIVE-IN ESTABLISHMENTS — Includes those businesses designed to either wholly or partially provide services to customers while in their automobiles parked on the premises.

- C. Conditions. Drive-in establishments shall be allowed in districts where they are listed and the following conditions shall be considered prior to granting the permit:
 - (1) Supplemental section on general conditions, § 300-37; and/or
 - (2) Traffic safety:
 - (a) Provisions for traffic to "back up" off of public streets shall be provided.
 - (b) Safe entry and exit shall be provided with only one entry and exit point.
 - (c) Proper parking, which allows convenience and safety, shall be provided.
 - (d) Pedestrian safety shall be considered when constructing the facility and parking spaces.
 - (3) Locational considerations will be analyzed to insure that the character of the neighborhood will not be significantly diminished.
 - (4) Hours of operation.
 - (5) The need for buffers, especially when situated near residential structures.

§ 300-46. Ponds.

- A. Purpose. In order to minimize traffic safety problems associated with ponds inappropriately located near roadway and to reduce the probability of creating an attractive nuisance in densely populated areas, the following conditions shall apply.
- B. Conditions.
 - (1) Traffic safety.
 - (a) Setback. All ponds constructed shall be set back a minimum of 50 feet from the right-of-way of any roadway.

- (b) Location. New ponds shall be located in such a manner so as to minimize the likelihood of accidental vehicular access (e.g., avoid locating at the end of a dead end or "T" roadway).
- (c) Area requirements. All area requirements (except front yard) for the district in which the pond is proposed shall be met in locating the pond.
- (2) Water safety. In R1, R2 or R3 Districts in areas where there are one or more neighboring housing units within 100 feet of the proposed site for the pond, one of the following shall be accomplished:
 - (a) Fence. As a minimum, a four-foot high security fence shall completely surround the pond; or
 - (b) Slope. The pond shall be designed such that the slope from the shore 10 feet towards the center of the pond shall be a maximum of 25% (three feet of drop per 12 feet of run).

§ 300-47. Lakeshore regulations.

- A. Purpose. Due to the unique features associated with lakeshore properties and the need to protect views, the following regulations shall apply to parcels located adjacent to Lake Erie, Cassadaga Lake or Bear Lake. In cases of conflict with other regulations, the most stringent shall apply.⁴⁶
- B. Conditions.
 - (1) Setbacks. No principal structures intended for inhabitation shall be permitted within 50 feet of the shoreline based on high water levels. Refer to general provisions section on established front yards, § 300-28.
 - (2) Accessory buildings. Accessory buildings require a special use permit from the Zoning Board of Appeals, with consideration given to the following:⁴⁷
 - (a) Visibility from adjacent parcels.
 - (b) Structure is sufficiently anchored to prevent movement due to wind, high waters, etc.
 - (c) Structure does not extend beyond the natural high water shoreline.
 - (d) Other reasonable conditions deemed necessary.
 - (3) Breakwalls. Any modifications of a shoreline shall be in accordance with Corps of Engineers Regulations.
 - (4) Fences.

46. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

47. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (a) Any fence established within 50 feet of the shoreline (based on high water level) shall be by special use permit only. Consideration shall be given to the supplemental section on fences, and the following:
 - [1] Visibility from adjacent parcels;
 - [2] Height of fence;
 - [3] Type of fence; and
 - [4] Other reasonable conditions deemed necessary.
 - [5]
 - (b) Preexisting fences over four feet in height shall be subject to a special use permit review to determine if there is a nuisance associated with the fence. If a nuisance exists, it shall be corrected within a reasonable time period as determined by the permitting board.
- (5) TV dish antennas. In addition to complying with the supplemental regulations on TV dish antennas, any TV dish antenna proposed to be located on a parcel of land contiguous to a lake must not be located between the lake and the primary structure. This requirement shall apply to primary and contiguous secondary vacant lots.

§ 300-48. Parking.

- A. Purpose. Off-street parking space(s) with a proper and safe access shall be provided within a structure or in the open to serve adequately the uses on each lot within the district. Any application for a building permit for a new or enlarged building structure or change in use shall include with it a plot plan drawn to scale and fully dimensioned, showing any parking in compliance with the regulations of this chapter. However, in existing commercial districts, parking shall only be required to be provided for new development where it is reasonably possible. All parking spaces shall be allowed by right which requires a zoning permit, except that no permit is required for new single-family or duplex parking spaces.
- B. Size requirements. A required off-street parking space shall be an area of not less than 162 square feet, not less than nine feet wide by 19 feet long, exclusive of access drives or aisles, ramps, columns or office and work areas. Aisles between vehicular parking rows shall not be less than 12 feet in width when serving automobiles parked at a forty-five-degree angle in one direction and not less than 20 feet in width when serving automobiles parked perpendicular to the aisles and accommodating two-way traffic.
- C. Street access. Parking facilities shall be designed with appropriate means of vehicular access to a street or alley in such a manner as will least interfere with the movement of traffic.
- D. Location. No parking space nor portion thereof established on the same zoning lot with a building shall be located within a required front yard and no parking spaces nor portion

thereof established on a lot without a building shall be located closer to any street line than the front yard setback requirements of this chapter in the same manner as a building or structure. The aforementioned required setbacks shall not be applicable to commercial districts, nor to residential driveways which may be used for parking. For nonresidential off-street parking, the Municipal Board may, upon request by the applicant, allow certain parking spaces off the applicant's property but within 500 feet of said property to be included as part of the required spaces.

- E. Material composition. All open off-street parking space and access areas, except those accessory to single-family dwellings and duplexes, shall be surfaced with some all-weather low-dust materials such as stone, gravel or macadam.
- F. Number of spaces. The following parking spaces shall be provided and satisfactorily maintained by the owner of the property, for each use which, after the date when this chapter becomes effective, is erected, enlarged or altered for use for any of the following reasons:

Uses	Minimum of 1 Space Per
One-family residence and mobile home	Dwelling unit
Two-family residence	Dwelling unit
Multifamily residence	Dwelling unit
Church	5 fixed seats
Home for aged	3 residents
Elementary school	20 students
High school and college	12 students
Library	1,000 square feet
Places of assembly, including convention halls and dance halls	200 square feet
Club, lodges (without sleeping accommodations)	Each 5 capacity of hall
Places providing sleeping accommodations, including hotels, motels and tourist homes	Sleeping unit
Mortuaries or funeral parlors	1/8 viewing room, plus 1 for every employee
Offices, banks	100 square feet floor area
Food market	200 square feet floor area
Eating and drinking establishments	4 seats or 1 for each 200 square feet floor area, whichever is more
Bowling alley	Alley
Other commercial	300 square feet sales area
Industrial	Employee (maximum work shift)
Other uses not listed above	500 square feet floor area

§ 300-49. Loading and unloading.

- A. Purpose. Off-street loading and/or unloading spaces for nonfarm commercial vehicles while loading and/or unloading shall be provided for new uses where it is deemed that such facilities are necessary to serve the use or uses on the lot. At least one off-street loading and/or unloading space shall be provided for all commercial establishments in excess of 7,500 square feet of floor area.
- B. Conditions:
- (1) Size. Each loading and/or unloading space shall be at least 14 feet wide, 60 feet long and shall have at least a fifteen-foot vertical clearance; shall have a sixty-foot maneuvering area. Refer to variance section, § 300-102, where this requirement cannot be met.
 - (2) Use of parking spaces. Generally parking space shall not be used for loading and/or unloading purposes except during hours when business operations are suspended or if pedestrian and vehicle traffic will not be obstructed. However, the permitting board may allow the use of parking spaces when it is determined that the effects will be minimal.
 - (3) Design. Loading and/or unloading facilities shall be designed so that trucks need not back in or out, or park in any public right-of-way. No truck shall be allowed to stand in a travelled roadway or pedestrian walkway or in any way block the effective flow of persons or vehicles. The loading and/or unloading area shall have an all-weather surface to provide safe and convenient access during all seasons.
- C. Preexisting uses. Any commercial use existing as of the effective date of this chapter shall not be subject to this section. However, any existing use which is changed to another more intensive commercial use shall be evaluated at a public hearing to determine if portions of this section shall apply.

§ 300-50. Signs.

- A. Purpose. The intent of this section is to preserve and enhance the commercial and industrial districts by encouraging signs in character and scale with individual buildings and with the municipality to avoid a chaotic, unsafe or unattractive clutter of signs by prohibiting signs or advertising devices which are inappropriate, in size or type, to municipal character, and to protect the character of the residential districts by strictly limiting signs within them.
- B. Administration.
- (1) Permits required. Except as listed in Subsection B(2) and (3), a zoning permit shall be required before an outdoor sign is created, altered, relocated or enlarged. A permit shall not be issued until all applicable sign regulations are met. All requests for permits must be accompanied by a plan drawn to scale showing the exact size, shape, location and type of sign.

- (2) Exempt signs. The following signs shall be exempt from all regulations of this section: public signs such as directional, street, traffic and personal identification signs not more than two square feet in size.
 - (3) Signs requiring no permit. The following signs shall be subject to all regulations of this section but shall be exempt from obtaining a permit as required above:
 - (a) Temporary signs to include contractor signs, political signs and fruit stand signs [see Subsection C(3) below]:
 - (b) Nonilluminated indoor signs;
 - (c) Realty signs; and
 - (d) Household sale signs. [See Subsection C(3)(c) below.]
- C. Specific regulations by sign type. Specific regulations shall take precedence over the more general sign regulations.
- (1) Signs attached to buildings.
 - (a) No sign shall project more than 12 inches from the building wall on which it is attached.
 - (b) No sign shall project higher than the roofline.
 - (c) No sign shall be permitted to be mounted on the roof of a building above the roofline.
 - (d) No sign shall extend higher than 18 feet in height as measured from the ground.
 - (e) No sign shall be so located as to overhang above a walkway or a right-of-way.
 - (f) No sign with a greater size area than 100 square feet shall be permitted.
[Added 4-25-2005 by L.L. No. 2-2005]
 - (2) All advertising signs, on-premises advertising signs, off-premises advertising signs, freestanding signs and billboard signs (as defined in this chapter) shall comply with the following rules and regulations: [Amended 4-25-2005 by L.L. No. 2-2005⁴⁸]
 - (a) Maximum area.
 - [1] The maximum size area of any sign shall be 100 square feet in Districts B1, B2, I1 and I2 only.

48. Editor's Note: Section 7 of L.L. No. 2-2005 provided as follows: "Non-Conforming Signs. Following the enactment of this Local Law, all non-conforming existing on-premises advertising signs, off-premises advertising signs, free-standing signs and billboard signs, (as defined in this Local Law) shall be removed within twelve (12) years, or brought into compliance with this Local Law."

- [2] The maximum size area of any sign shall be 64 square feet in Districts C1, AR1 and AR2.
- [3] The maximum size area of any sign shall be 16 square feet in Districts R1, R2 and R3.
- (b) The maximum height of any sign shall not exceed 40 feet when measured from the ground at the point of the nearest public right-of-way (for these purposes determined to be the shoulder of the road immediately adjacent to the paved portion of the right-of-way) to the top of the sign or structure containing the sign, whichever is higher.
- (c) Off-premises advertising signs and freestanding signs shall only be allowed in areas zoned B1, B2, I1 and I2.
- (d) Off-premises advertising signs, freestanding signs and billboard signs shall be located no closer together than 450 feet as measured by lineal distance along the public right-of-way.
- (e) The maximum number of signs of any type allowed in the B1, B2, I1 and I2 zones shall be limited to two on-premises advertising signs and one off-premises advertising sign.
- (f) No off-premises advertising sign, billboard or freestanding sign shall be allowed in Zoning Districts R1, R2, R3, C1, AR1 and AR2.
- (g) Each exposed face or side of a sign shall be considered a separate sign and treated as such independently under the terms of these rules and regulations; however, if sign is a two-faced or two-exposure on-premises advertising sign, it shall be deemed to be one sign.
- (h) No freestanding sign larger than eight square feet shall have less than three vertical feet of open space at the bottom of the sign extending the entire width and length of the sign.
- (i) No off-premises advertising sign, on-premises advertising sign, freestanding sign or billboard-type sign as defined herein shall be located nearer than 450 feet by lineal measurement to an adjoining property line, which adjoining property has a residential use.
- (j) All advertising signs, on-premises advertising signs, off-premises advertising signs, freestanding signs and billboard signs (as defined in this chapter) shall be constructed of steel or metal alloy material.
- (3) Temporary sign regulations. The following specific regulations shall apply to temporary signs:
 - (a) Contractor signs shall be allowed during periods from when the job commences and is completed. The sign must be removed if substantial progress on the job is not taking place. The maximum size shall be 10 square feet.

- (b) Political signs up to 32 square feet in size shall be allowed 21 days before and up to one week after the election and it shall be the responsibility of the candidate to comply with this regulation. Permission from the property owner must be received prior to sign placement.⁴⁹
- (c) Household sale signs shall be permitted in accordance with the following regulations:
 - [1] Maximum size. No more than four feet high by four feet wide.
 - [2] Maximum number. No more than six signs shall be used, and permission must be received from property owners where off-premises signs are located.
 - [3] Location. Signs shall not be placed on utility poles.
 - [4] Illumination. Signs shall not be illuminated.
 - [5] Time. Household signs may be erected two days before the sale starts and must be removed within 24 hours of the last day of the sale.
- (d) Seasonal on-premises roadside stand signs shall be allowed in accordance with the following conditions:
 - [1] Maximum size. Sixteen square feet (limited stand) and 100 square feet (general stand).
 - [2] Maximum number. No more than two signs shall be used per property with more signs requiring a special use permit.
 - [3] Location. Signs shall not be placed on off-premises trees or utility poles.
 - [4] Illumination. Signs shall not be illuminated.
 - [5] Time. Roadside stand signs shall only be permitted during the season in which the agricultural product being sold is available.
 - [6] Permits. No permit shall be required for seasonal on-premises roadside stand signs.
- (e) Real estate signs up to 10 square feet in size shall be allowed until one month after the sale is finalized.
- (f) Signs for quasi-public uses to include churches, schools, libraries, hospitals and nursing homes shall be a maximum of 25 square feet in size, and shall require a special use permit. If the sign is to be freestanding, it shall be set back 15 feet from the street edge.⁵⁰

49. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

50. Editor's Note: Original Section 614.C.4, pertaining to billboards, which immediately followed this subsection, was repealed 4-25-2005 by L.L. No. 2-2005.

- (4) Interior illuminated window signs. Inside illuminated signs shall be a maximum of two square feet each and no more than 5% of the front window area can contain such signs. No permit is required. More than these maximum limits would require a special use permit.
- (5) Residential development signs. Any sign allowed for a subdivision or multiple-family development shall be allowed by special use permit. A maximum size of 50 square feet shall be permitted and said signs may be illuminated lightly.
- (6) Home occupation signs. See supplemental section on home occupations, § 300-42.⁵⁰

D. General regulations.⁵¹

(1) Location.

(a) Traffic.⁵²

[1] No sign shall be stapled, pasted or otherwise attached to utility poles or trees within a road or street right-of-way.

(b) Ingress and/or egress.

[1] No signs shall be located which shall prevent free ingress or egress from any window, door or fire escapes.

[2] No sign shall be so placed that it will obscure light and/or air movement from a building.

(2) Illumination.

(a) No off-premises neon signs are permitted.

(b) Illuminating arrangements for signs shall be such that the light is concentrated on the sign with a minimal spillover cast on the street, sidewalk or adjacent properties.

(c) Signs which contain, include or are illuminated by any flashing, intermittent or moving lights are prohibited.

(3) Moving parts.

(a) No signs shall utilize moving parts.

(b) Pennants, banners, flags, bunting, whirligigs or other similar attention-getting devices shall not be permitted where its purpose is to advertise or bring

50. Editor's Note: Original Section 614.D, general regulations for business signs, which immediately followed this subsection, was repealed 4-25-2005 by L.L. No. 2-2005.

51. Editor's Note: Original Section 614.E.1, Condition, which immediately followed this subsection, was repealed 4-25-2005 by L.L. No. 2-2005.

52. Editor's Note: Original Section 614.E.2.a(1), which immediately followed this subsection, was repealed 4-25-2005 by L.L. No. 2-2005.

attention to a commercial business operation. This provision does not apply to the displaying of a national, state or other flag not intended for advertising.⁵³

E. New York State regulations.

- (1) New York State Highway regulations related to outdoor advertising shall also apply where applicable.

F. Preexisting signs.

- (1) General regulations covered. Legally existing nonconforming signs shall be required to comply with the following general paragraphs:⁵⁴

- (a) Nonconforming signs. Following the enactment of Local Law No. 2 of 2005 on April 25, 2005, all nonconforming, existing, on-premises advertising signs, off-premises advertising signs, freestanding signs and billboard signs (as defined in this chapter) shall be removed within 12 years or brought into compliance with this chapter.

- (b) Cessation. Except as otherwise provided in this Zoning Chapter, any sign which becomes vacant or unoccupied, or unused by cessation or failure to display, for a period of six months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign, or the owner of the property or premises on which the sign is located, after reasonable notice to said owner by the Zoning Enforcement Officer. Upon the failure of the sign owner or owner of the premises upon which the sign is located to remove said sign, said sign may be removed by the Town of Pomfret at the expense of the owner of the property upon which the sign is located.

- (2) Compliance. Sign owners notified of a violation shall respond within 30 days of receipt on how they intend to comply. Compliance shall take place within three months of notification.

G. All signs shall comply with the following: **[Added 4-25-2005 by L.L. No. 2-2005]**

- (1) No sign shall create a traffic hazard by obstructing the view at any street or intersection, or by design, resemble by color, shape or other characteristic any traffic control device.
- (2) Every sign shall at all times be in safe and structurally sound condition. The Zoning Enforcement Officer of the Town of Pomfret shall require compliance with all standards of this chapter. If the sign does not comply with adequate safety and maintenance standards, the sign shall be removed at the expense of either the sign owner or property owner.

53. Editor's Note: Original Section 614.F, Cessation, which immediately followed this subsection, was repealed 4-25-2005 by L.L. No. 2-2005.

54. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Except as otherwise provided in this Zoning Chapter, any sign which becomes vacant or unoccupied, or unused by cessation or failure to display, for a period of six months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. An abandoned sign is prohibited and shall be removed by the owner of the sign, or the owner of the property or premises on which the sign is located after reasonable notice to said owner by the Zoning Enforcement Officer. Upon the failure of the sign owner or owner of the premises upon which the sign is located to remove said sign, said sign may be removed by the Town of Pomfret at the expense of the owner of the property upon which the sign is located.

§ 300-51. Fences/walls.

- A. Purpose. For the purpose of protecting properties adjacent to fences and walls from indiscriminate placement, unsightliness, related health and safety problems, etc., the following rules and standards shall apply:
- B. Definition. As used in this chapter, the following terms shall have the meanings indicated:
- FENCES — Includes hedges and walls and is further defined in the definitions section, § 300-6.
- C. Regulations. Fences and walls shall be allowed by permit in any district and shall conform to the regulations which follow:
- (1) Exempt fencing. Fencing used for agricultural purposes on farms (see definition) shall be exempt from all regulations except for maintenance requirements detailed below. Additionally, nonboundary fencing located more than 25 feet from any property line shall be exempt.
 - (2) Permits. Fences shall be allowed up to six feet in height by no permit. Fences above six feet in height shall require a special use permit, and consideration will be given to visibility from adjacent properties, light and air movement, etc.
 - (a) Fence panels shall not exceed six feet in height with a maximum air space of four inches beneath the fence, based on the average finished grade of the lot, and excluding the typical fence post with caps, not to exceed 10 inches above fence top. **[Added 6-13-2007 by L.L. No. 2-2007]**
 - (3) Setback from road. Fences shall not be located within legal highway rights-of-way.
 - (4) Proximity to neighboring properties. All fences, walls and/or hedges shall be located no closer than two feet from adjacent property lines. This rule can be waived if agreed to in writing by adjacent property owners.
 - (5) Fire hazard. Any fence considered to be flammable shall be prohibited. Also, any fence in a potentially hazardous location shall be not allowed.
 - (6) Finished sides. The finished sides of all fences must face adjacent properties. This rule can be waived if agreed to in writing by adjacent property owners.
 - (7) Materials. Only durable materials generally used and accepted by the industry shall be used for fences.
 - (8) Maintenance. All fences shall be maintained structurally and visually.
 - (9) Lakeshore fences. See supplemental section on lakeshore regulations, § 300-47.
 - (10) Corner setbacks. Fences, walls and/or hedges shall not be located so as to cut off or reduce visibility at intersections. See section on visibility in Article V, § 300-25.

- D. Existing fences. Fences in existence at the time of the enactment of this chapter shall only be subject to Subsection C(1), Exempt fencing, and Subsection C(8), Maintenance, as listed above.

§ 300-52. Television dish antennas.

- A. Purpose. The purpose of this section is to protect the aesthetic values of the community and the health and safety of its citizens. This section recognizes that the most visible parts of our environment are the public streets and the abutting front yards and that the appearance of these areas largely sets the character and quality of our environment. Large TV dish antennas are intrusive and incompatible elements when installed in front yards and seriously impair the aesthetic qualities of residential streets and properties. Further, dish antennas in highly visible and accessible locations are an attractive nuisance for small children who might attempt to climb and play on them, and a tempting target for vandals; particularly during dark hours. Therefore, it is the intent and purpose of this section to require that TV dish antennas (over four feet in diameter) be located inconspicuously.
- B. Conditions.
- (1) Location of large TV dish antennas over four feet in diameter. Primary structure area standards (front, side and rear yards) shall be met. Large dish antennas shall not be located in a front yard and they shall be as inconspicuously located in relation to adjacent structures as is reasonably possible.
 - (2) Advertising. Advertising located on the dish shall be limited to identification lettering of the business that sold the dish to the landowner.
 - (3) Lakeshore lots. See supplemental section on lakeshore regulations, § 300-47.

§ 300-53. Solar systems.

In order to promote and protect the use of solar systems (active and passive), the following regulations shall apply:

- A. Solar permit and placement. The placement of structures or modification of existing structures which are to contain solar systems shall be by special use permit if protection is to be sought under Subsection B of this section. If no protection is sought for a solar system, then no permit shall be required for the installation unless the floor space is increased. Consideration will be given to locating the solar structure the furthest distance from adjoining properties, on the southern exposure, which is reasonably possible. This distance shall be a minimum of 100 feet and may be required to be more if the slope so dictates.
- B. Adjacent property control. The placement of structures, trees, towers, etc., which have the potential of blocking the sun from adjacent solar collectors established by special use permit under Subsection A of this section shall also only be allowed by special use permit. The placement of said potential obstruction shall be such that it least interferes with the adjacent solar collectors while still allowing reasonable use of the land.

- C. Notification. If protection is sought, owners of all properties within 200 feet of the property on which the solar collector is to be placed will be notified in writing of the intent to place a solar system in the neighborhood and the possible effects that this could have on future development. The date, time and location of the public hearing shall be included in the notification.

§ 300-54. Gravel operations.

- A. Purpose. In addition to the regulations required by the NYSDEC, all gravel pits shall be regulated by this section, the purpose being to limit the nuisances associated with gravel pits and insure that adjacent residential neighborhoods are protected. See the definition of "gravel pit, small."⁵⁵
- B. Conditions. In districts where small gravel pits are allowed, the following conditions shall be considered:
- (1) Equipment location. The placement of power-activated sorting machinery, blasting, stockpiling, etc., shall only be as close to residential structures on adjacent parcels as is necessary. In determining the minimum distance, the following will be considered:
 - (a) Type of machinery and potential nuisances associated with it;
 - (b) Density of development in vicinity;
 - (c) Prevailing winds;
 - (d) Size of operation or number of trips per day; and
 - (e) Attitudes of adjacent property owners.
 - (2) Fencing. Fences may be required for public safety as determined by the permitting board. Consideration will be given to the topography, type of operation, and equipment being used, size of the lot, population density, and any other reasonable characteristic.
 - (3) Restoration. All gravel pits shall be restored to a safe and an aesthetically pleasing state within two months after termination of the operation. Termination shall be considered to have taken place when no gravel and sand has been extracted for a one-year period and there is no intention of reactivation of the site. A special use permit shall be required to keep a site in an active status after no reasonable amount of activity has taken place for five years.
- C. Preexisting operations. Gravel pits in existence before the enactment of this chapter shall be subject to Subsection B(2), Fencing, and (3), Restoration, above. In addition, any expansion or enlargement (purchase of additional property or use of property beyond scope of permit) of such gravel and sand operations shall be subject to all regulations in this chapter within reason as determined by the permitting board.

55. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 300-55. Gas compressors.

- A. Purpose. Gas transmission compressors are capable of producing unacceptable environmental intrusion, especially where residential uses are prevalent. In order to avoid unreasonable use of property resulting in substantially reduced use-value of adjacent inhabited or uninhabited properties, this section shall regulate the location and installation of all gas compressors not under the jurisdiction of the NYS Public Service Commission. Generally, the section is intended to preserve and protect the general welfare, health and safety of the public while still promoting the transmission of natural gas in a reasonable environmentally acceptable manner.
- B. Administration.
- (1) Permit requirements. In districts where gas compressors are permitted, a special use permit shall be required for the placement of a new gas compressor.
 - (2) Preexisting gas compressors. All gas compressors existing or being constructed at the time of enactment shall be subject to the following conditions as listed below: Subsection C(2)(c), Maintenance; Subsection C(2)(d), Barriers; and Subsection C(3), Identification signs. These conditions shall be considered at a public hearing held a minimum of 30 days after the owner of the compressor station is notified in writing. All owners of parcels as well as renters within 2,000 feet of the proposed/existing gas compressor shall be notified in writing of the public hearing. Compliance shall take place within two months of receipt of a written decision by the permitting board. A longer compliance period may be granted by the permitting board if the cost of the alterations are significantly high.
- C. Conditions. All gas compressors shall be located and designed such that the nuisances associated with the use shall be minimized. It shall be unlawful for any person or firm to make, continue, or cause to be made or continued any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers comfort, repose, health, peace or safety to others. The following specific conditions shall be met:
- (1) Location. The site shall be appropriately located with consideration given to predominant wind direction, topography, location of dwelling units, and any other reasonable conditions as deemed necessary by the permitting board.
 - (2) Noise levels.
 - (a) Easement. All new gas compressors covered by this section must be located such that lands subject to a 40 decibels or higher noise level produced by a new compressor shall be covered by a noise easement clearly delineating the maximum noise level allowed at any inhabited dwelling unit or proposed site of a dwelling unit. Preexisting leases shall not negate the requirement for a noise easement as described above.
 - (b) Certification of noise level. Prior to being granted a permit for the placement of a gas compressor, the owner of the proposed compressor shall be responsible for verifying the compressor and quieting devices (silencer, low speed fan, barriers such as walls or berms, etc.) as proposed will meet the specified decibel level requirements. A certified noise consultant must certify

in writing that the requirements will be met. Additionally, after placement of the compressor is completed along with the specified quieting devices the same certified noise consultant must verify that the 40 decibels requirements are not exceeded. This certification must be accomplished within 30 days or the compressor shall be only operational during daylight hours until it is brought into compliance.

- (c) Maintenance. The compressor and quieting devices must be properly operated and maintained such that the noise level will not rise above the specified permissible levels. If it becomes apparent to the permitting board that the noise levels are not in compliance, the Board may require the owner of the compressor to do corrective maintenance and again, at the owner's expense, have the compressor noise level verified by a certified noise consultant. This certification must be accomplished within 30 days or the compressor shall be only operational during daylight hours until it is brought into compliance.
- (d) Barriers. Where it is deemed necessary, either a natural or man-made acoustical barrier may be required for the purpose of minimizing the nuisances associated with a gas compressor. In extreme cases, where no alternative is available, a fully enclosed acoustically designed structure may be required.
- (3) Identification sign. Each gas compressor shall be identified with a conspicuously placed sign identifying the compressor, its location and the name of the person/company responsible for the unit in case of emergency. Additionally, a twenty-four-hour emergency telephone number should be included.
- (4) Other. Any other reasonable conditions as deemed necessary by the permitting board.
- D. State Environmental Quality Review Law. All permit requests for gas compressors shall be subject to an environmental review, in accordance with state law. No zoning permit shall be granted until this environmental review has been accomplished by the municipality.

§ 300-56. Vehicle dismantling, scrap and junkyards.

- A. Purpose. This section exists in order to insure that dismantling and junkyards are designed safely with least amount of impact on the surrounding neighborhood.
- B. Conditions. Prior to the granting of a special use permit, assurances will be received that the following conditions will be met:
 - (1) Fences.
 - (a) Yards shall be completely surrounded with a fence for screening and security purposes of at least eight feet in height. However, where the permitting board determines that the character of the neighborhood does not require aesthetic screening or security fencing, this eight-foot fence requirement can be waived to any degree for the side and rear yards.

- (b) There shall be located a gate in the fence which shall be kept locked at all times except when the vehicle dismantling or scrap yard is in operation.
 - (c) The fence shall be located a minimum of 50 feet from adjacent public highways.
 - (d) All storage, dismantling, and work on the vehicles or scrap shall take place within the fenced area.
 - (e) The type of materials used shall be generally accepted by the industry and commonly used as fencing material. Fences shall be permanent and substantial.
 - (f) Fences shall obscure or screen, adequately, the contents of the yard.
 - (g) Fences shall be well-maintained and aesthetically pleasing.
- (2) Location considerations.
- (a) Yards shall only be allowed in the Industrial District.
 - (b) Yards shall be allowed where there will be a minimum negative effect on the character of existing neighborhoods.
 - (c) No yard shall be permitted within 500 feet of a church, school, public building or other place of public assembly.
 - (d) Yards shall not be permitted to be located upon areas where an eight-foot fence will not reasonably screen the contents from adjacent highways or properties.
- (3) Off-street parking.
- (a) Sufficient off-street parking shall be provided for customers.
- (4) Fire safety.
- (a) The Fire Department shall be notified prior to the granting of a special use permit for a yard and be given 30 days within which to make recommendations.
 - (b) Inside, adjacent to and contiguous with the fence, a strip of land at least 10 feet wide shall be kept clear of all dry grass or other growth or combustible material so as to provide a fire lane around the whole area.
 - (c) There shall be maintained at least one fire extinguisher of approved design and capacity for each 40,000 square feet of area. Each fire extinguisher shall be hung or mounted in a conspicuous place, clearly marked and visible.
 - (d) All vehicles and scrap and junk shall be disassembled by means other than burning. It shall be arranged in neat rows so as to permit easy, clear passage through the area.

(5) Visual considerations.

(a) There shall be no stacking of vehicles, scrap or junk above eight feet in height from the ground. However, vehicles and scrap which have been crushed may be loaded on to the bed of a truck where they will be removed from the premises within a reasonable time period.

(b) An appropriate buffer shall be established between adjacent properties.

(6) Minimum lot size.

(a) Adequate acreage shall be available to handle present and future needs of proposed yards.

(7) Other considerations.

(a) Suitable sanitary facilities shall be provided in accordance with state health laws.

(b) Inspection of yards shall be allowed at any reasonable time to insure compliance with this and other laws.

(c) Reasonable hours of operation may be specified.

(d) Other reasonable conditions may be imposed as is deemed necessary.

C. Preexisting yards. Yards in existence before the enactment of this chapter shall be subject to the following: Subsection B(1)(a), fence; Subsection B(1)(b), gates; Subsection B(1)(c), with the exception that the minimum distance is 25 feet and not 50 feet; Subsection B(1)(d), on location; and Subsection B(5)(a), visual considerations, above. Compliance shall take place within a six-month period of time. In addition, any expansion or enlargement of any preexisting yards shall be subject to all of the regulations of this chapter when they can be reasonably enforced as determined by the Municipal Board.

§ 300-57. Heavy vehicles. [Amended 6-13-2007 by L.L. No. 2-2007]

A. Purpose. This section has as its main purpose the preservation of densely developed neighborhoods and particularly the elimination of noise from engines and air-conditioning units caused by large commercial truck parking. Visual intrusion into residential neighborhoods is also a primary concern.

B. Regulations in districts where permitted. Heavy vehicles shall comply with the following regulations:

(1) Location. Heavy vehicles shall be allowed to park in any district under the following conditions:

(a) Heavy vehicles are not allowed to park out of doors in R1, R2 and R3 Districts.

- (b) The vehicle is located a minimum of 150 feet from the closest dwelling unit on adjacent parcels.
- (2) Location waivers. In an emergency (e.g., truck breakdown) or for normal deliveries, the location requirements in Subsection B(1), above, shall be waived for a maximum of 48 hours.
- (3) Night operations. Diesels/compressors shall only be allowed to operate if a nuisance is not created with nearby residents due to the noise.
- C. Preexisting heavy vehicles. This section shall apply to all heavy vehicles immediately, including those that have in the past parked in such a manner so as not to be in compliance with this section.

§ 300-58. Large group gatherings.

- A. Purpose. In order to promote safe and healthy gatherings of large groups of people, as defined in the definition section, § 300-6, certain conditions shall be complied with as defined below.
- B. Conditions. Prior to the granting of a special use permit, the following will be taken into consideration:
 - (1) Traffic safety, parking, access;
 - (2) Noise;
 - (3) Health and sanitation;
 - (4) Character of neighborhood development density;
 - (5) Beverages to be served;
 - (6) Security and traffic control;
 - (7) Cleanup and restoration of land; and
 - (8) Other appropriate considerations.
- C. Sponsor responsibility. The sponsor of any large group gathering shall be responsible for compliance with any conditions which are specifically imposed as well as the overall conduct of the gathering.
- D. Exempt gatherings. Nonprofit and local civic group sponsored gatherings shall be exempt from permit requirements.
- E. Preexisting uses. All large group gatherings held after the effective date of this chapter shall be subject to this section.

§ 300-59. Mobile home standards.

- A. Purpose. This section has as its main purpose the presentation and preservation of neighborhoods by insuring that mobile homes are placed properly with minimal aesthetic and safety standards implemented.
- B. Conditions. In districts where mobile homes are allowed by special use permit all of the conditions below shall be considered prior to the granting of the zoning permit. However, in those districts where mobile homes are allowed by right, a zoning permit will only be granted after the first three conditions listed below (floor space, parking and frost-free foundation) have been met. **[Amended 7-9-1997 by L.L. No. 3-1997]**
- (1) Minimum floor space. The original "advertised" floor space for a mobile home, excluding add-ons, shall be a minimum of 760 square feet.
 - (2) Parking. Off-street parking spaces shall be in accordance with the supplemental section on parking, § 300-48.
 - (3) Frost-free foundation. A continuous masonry perimeter installed at a frost-free depth. Such perimeter requires adequate ventilation and the manufacturer's recommended vapor barrier installed according to the manufacturer's recommendations, and is necessary prior to the issuance of a certificate of occupancy. See the definition section, § 300-6, for a complete definition of frost-free foundation.
 - (4) Location. Mobile homes shall only be allowed when they will not have a substantial negative effect on the existing character of a neighborhood.
 - (5) Landscaping. Landscaping appropriate to the neighborhood shall be considered.
 - (6) Additions. All additions shall be in accordance with the New York State Uniform Code and shall be compatible with the construction of the mobile home.
 - (7) Storage. Miscellaneous garage and recreational items traditionally stored undercover shall not be stored outdoors. Appropriate storage shall be supplied.
 - (8) HUD requirements. All mobile homes (new and used) shall comply with HUD construction requirements prior to being allowed to be placed on a lot.
 - (9) Other considerations. Any other reasonable conditions as deemed necessary by the permitting board shall be considered for inclusion. See supplemental section on general development conditions for a list of possible conditions to include.
- C. Preexisting uses. Preexisting mobile homes shall comply with conditions in Subsection B(2), Parking, and Subsection B(3), Frost-free foundation, where it is reasonable. These conditions shall be met within one year from the date of written notification.

§ 300-60. Mobile home parks.

- A. Purpose. This section provides the various conditions which will insure that a quality park will be designed which provides a safe, healthy and appealing environment for mobile homes.
- B. Conditions. Mobile home parks shall comply with the following standards:
- (1) Area and setback requirements.
 - (a) Size. Parks shall consist of a minimum of five acres and shall be designed for a maximum of five units per acre overall.
 - (b) Buffer. An appropriate vegetation or open space buffer shall be located around the perimeter of the park. Type and size of the buffer shall be determined by the density and type of adjacent uses and the need for separating the uses. As a minimum, a twenty-five-foot buffer (open space or vegetation) shall be required with the permitting board determining the need for a greater buffer.
 - (c) Setback. All mobile homes and other development shall be located a minimum of 100 feet from the edge of any public road. Mobile homes shall be set back a minimum of 20 feet from the edge of the park's private road.
 - (d) Lot. Each mobile home shall be located on a lot which is a minimum of 5,000 square feet, and a minimum of 50 feet in width. The width requirement can be waived for corner lots.
 - (e) Side yard. Mobile homes to include enclosed additions shall be spaced a minimum of 25 feet from each other.
 - (f) Floor space. The minimum floor space allowed for a mobile home placed in a park shall be in accordance with area requirements for the district in which the park is located. Add-ons shall not be used in calculating the size.
 - (2) Streets and walkways; lot numbers.⁵⁶
 - (a) Entrances and exits to the park shall be safety designed.
 - (b) Private roads shall be a minimum of 16 feet wide and shall as a minimum be carpet coated, graveled or paved, and be approved by the Fire Chief for use by emergency vehicles.
 - (c) Private roadways shall be maintained in such a manner so as to permit safe travel year-round (e.g., free of snow and ruts.)
 - (d) Walkways from the street to door shall be required in addition to a patio for each mobile home.
 - (e) Lot numbers shall be visible from the private roadway.

56. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) **Parking.**
- (a) Off-street parking shall be provided with a minimum of 400 square feet for each mobile home with gravel, carpet coating or paving being used.
 - (b) Sufficient auxiliary parking shall be provided for trucks, boats, travel trailers, etc.
- (4) **Recreation.** Open space and recreational areas shall be set aside and improved at central locations at a rate of 700 square feet per mobile home. They shall be maintained in a manner conducive to recreational use.
- (5) **Frost-free foundation.** A continuous masonry perimeter installed at a frost-free depth. Such perimeter requires adequate ventilation and the manufacturer's recommended vapor barrier installed according to the manufacturer's recommendations, and is necessary prior to the issuance of a certificate of occupancy. See the definition section, § 300-6, for a complete definition of frost-free foundation.⁵⁷
- (6) **Outdoor storage.** Due to the limited lot sizes and close proximity of mobile homes, no outdoor storage of tools, materials, equipment, junk or any other items, other than registered vehicles or patio-related items, shall be allowed. Where storage sheds are necessary to comply with this requirement, they shall be located in rear yards and out of sight to the greatest degree possible, substantially anchored, and well-maintained. Location of storage buildings shall be in compliance with the Codes of New York State, by special use permit.⁵⁸
- (7) **Drainage.** The park shall be located on a well-drained site properly graded to insure rapid drainage and freedom from stagnant pools of water.
- (8) **Location.** Mobile home parks shall not be located in developed residential areas where their presence will result in a detrimental effect on the character of the neighborhood due to significant traffic increases for the existing residential streets.
- (9) **Park design.** It is recommended that the design of the park not be barracks-like in nature and not be designed on the gridiron pattern with identical rectangular spaces. The angling of spaces and the clustering of mobile homes around culs-de-sac could be considered. Should this latter type of design be hampered by the minimum area requirement, the permitting board shall have the authority to alter those requirements by up to 10%.
- (10) **Lighting and utilities.** All driveways and walkways within the park shall be lighted at night with electric lamps of such candle power and so situated as may be directed by the Planning Board. It is recommended that consideration in each instance be given to the construction of all utilities underground. It shall be required that all lines between the meter and lot be underground.

57. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

58. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (11) Accessory retail or service uses. Accessory uses such as recreational facilities, convenience stores, laundromats and mobile home sales/service, customarily associated with mobile home parks, shall be permitted. However, the land utilized in this manner should not account for more than 5% of the total area of the park. Finally, no commercial character shall be visible from outside the park, and such services shall only be allowed when the number of sites is sufficient to support these services.
- C. Bond. At the discretion of the permitting board, the developer may be required to obtain an appropriate bond to insure compliance with conditions attached to the special use permit/site plan review.
- D. Preexisting parks. Mobile home parks in existence before the enactment of this chapter shall be subject to the following regulations:
- (1) Mobile homes shall be skirted with an attractive fire-resistant material within one year.
 - (2) Enlargements or expansions of all mobile home parks in existence before the enactment of this chapter shall comply with all regulations in this chapter to the extent determined by the permitting board.
 - (3) Off-street parking shall be provided within one year, where reasonable.
 - (4) Other reasonable conditions for mobile home parks in existence before the enactment of this chapter as deemed necessary.
- E. All fees to be imposed by the Town of Pomfret under § 300-60, Mobile home parks, shall be as set by the Town Board by Town Board resolution and as from time to time amended. **[Added 7-14-2004 by L.L. No. 4-2004]**
- F. Wherever in § 300-60 there shall be reference to the term "Building Inspector," it shall be understood that the term shall now refer to "Building Inspector/Code Enforcement Officer" and/or the "Zoning Enforcement Officer" of the Town of Pomfret. **[Added 7-14-2004 by L.L. No. 4-2004]**

§ 300-61. Temporary transportable dwelling units.

- A. Purpose. The primary purpose of this section is to limit the use of travel trailers and other temporary dwelling units to uses for which they are intended, namely, seasonal/recreational use. Ultimately, the protection of neighborhoods is promoted with respect to health and general quality. Commercial travel trailer parks are not subject to regulation under this section.
- B. Inhabitation time. Travel trailers, motor homes and other similar uses may be inhabited by nonrenters on a temporary basis in accordance with the following chart. No permit or fee is required unless the number of inhabitation days desired is greater than that specified, in which case a special use permit must be requested.⁵⁹

59. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

District	Maximum Number of Days Inhabited Per Time Period
R1, R2, R3	2 weeks per 3 months
B1, B2, AR2	4 weeks per 3 months
I1, I2, C1, AR1	6 months per year

C. Conditions.

- (1) Inhabitation. To be inhabited in an I1, I2, C1 or AR1 District, the travel trailer need not be located on a lot which contains an inhabited dwelling. For all other districts, the lot must have an inhabited dwelling. It is intended that travel trailers be generally inhabited by visitors/guests and not be residents of the principal dwelling unit.
- (2) Storage. A travel trailer may be stored (uninhabited) on any lot indefinitely.
- (3) Setbacks. Front, side and rear yard setbacks shall be met in the placement of the travel trailer.
- (4) Utilities. Permanent utility systems, used exclusively for temporary dwellings in residential or commercial districts, shall not be constructed.
- (5) Nuisances. Accessory dwellings may not be utilized in such a manner so as to cause a nuisance.
- (6) Field offices. Contractors may use temporary dwellings for field offices after obtaining a permit. Additionally, temporary dwelling units may be utilized by owner/builders during the construction of a structure.
- (7) Maintenance. All travel trailers shall be maintained in a condition suitable for highway use and capable of passing a state inspection.

- D. Preexisting uses. Storage and occupancy of travel trailers already in existence as of the effective date of this chapter shall within one year be in compliance with this section to the greatest degree possible.

§ 300-62. Temporary mobile homes.

- A. Purpose. The control of mobile homes in districts primarily where they are normally not allowed is the primary goal of this section.
- B. In conjunction with construction (inhabited):
- (1) Administration. A temporary special use permit may be applied for in conjunction with the construction of a dwelling unit.
 - (2) Conditions. The following conditions may be attached to the permit:
 - (a) A time schedule for commencement and completion of the dwelling unit. As a minimum, construction on the dwelling unit shall begin within one year

from the date when the mobile home is placed temporarily on the lot. Additionally, the mobile home shall be removed within three years from the date it was first placed on the lot, at which time the dwelling unit shall be livable.

- (b) The placement of the mobile home on the lot shall be in accordance with area standards unless the Municipal Board determines that such conforming placement would not be practical, in which case the conditions will be specified.
- (c) Due to the temporary nature of the permit, the mobile home need not be skirted.

C. Not inhabited.

- (1) Administration. A mobile home may be stored uninhabited within a district which allows mobile homes by right or by special use permit only after a temporary special use permit has been granted.
- (2) Conditions to be considered include time limitations and placement location.

§ 300-63. Travel trailer parks (commercial campground).

- A. Purpose. The purpose of this section is to protect existing neighborhoods from intense development associated with travel trailer parks. Consideration will be given to aesthetics, buffers, safe access and other reasonable conditions.
- B. Conditions. Travel trailer parks shall comply with the following standards:
 - (1) Area and setbacks.
 - (a) All lots (pads) shall be a minimum of 75 feet from any public highway.
 - (b) A one-hundred-foot wide buffer zone of appropriate vegetation shall be provided around the circumference of the park where adjacent property use is of such a nature that there could be conflicts. No travel trailers or other structures shall be located in the buffer area.
 - (c) Minimum lot sizes shall be 2,500 square feet for a vacation camp and 1,500 square feet for overnight camps.
 - (2) Streets and walkways.
 - (a) Access to the park must be designed to assure safe and convenient movement of traffic into and out of the park with a minimum disruption of traffic on adjacent public roads. This shall include a minimum clear view of 150 feet while pulling out onto the adjacent public roadways.
 - (b) Walkways shall be provided to service buildings.
 - (c) All park roadways shall be a minimum of 50 feet from any property line except for the entry and exit roads.

- (d) Park roads shall be constructed or treated in such a manner so as to minimize the creation of dust or mud.
- (3) Parking. Off-street parking, loading and maneuvering space shall be provided.
 - (4) Occupancy. The maximum length of occupancy per year shall be eight months. Trailers shall not be utilized as a permanent residence.
 - (5) Accessory uses. Accessory uses such as snack bars, recreational facilities, showers, laundromats, etc., customarily associated with travel trailer parks shall be permitted. However, the land utilized in this manner should not account for more than 10% of the total area of the park and the services shall be directed towards the occupants of the park. Finally, no commercial character shall be visible from outside the park and such services shall only be allowed when the number of sites is sufficient to support these services.
 - (6) Location. Parks shall not be located so as to cause heavy traffic to be directed through residential areas not accustomed to heavy traffic.
 - (7) Lake dockage. All docks shall begin on the shoreline no less than 200 feet from all property lines abutting the shorelines.
 - (8) Supervision. The park owner shall be responsible for having supervisory personnel or premises around the clock during the camping season for the purpose of policing the premises within the limits prescribed to him by law.
 - (9) Nuisances. The park owner shall prevent any undue proliferation of smoke, dust or any pollution of the air or water by the campers or campsites. Quiet hours shall be established by the owner as necessary.

§ 300-64. Fuel tanks.

- A. Purpose. The purpose of this section is to promote the safety of residents in residential districts from fire and explosion resulting from gasoline/volatile liquid tanks. As a secondary purpose, the maintenance of aesthetic values in residential neighborhoods is also promoted.
- B. Conditions.
- (1) In districts where fuel tanks (gasoline and volatile liquids) are allowed by right (permit required) the following conditions shall be followed:
 - (a) Lot size. A minimum lot of one acre shall be required.
 - (b) Uniform Code. All requirements of the Uniform Code shall be met.
 - (c) Setbacks. District setback requirements shall be met.
 - (2) In districts where fuel tanks are allowed with no permits, the following conditions shall be followed:

- (a) Uniform Code. All requirements of the Uniform Code and NFPA shall be met.⁶⁰
- (b) Setbacks. District setback requirements shall be met.

§ 300-65. Aircraft landing strip.

- A. Purpose. In order to protect residents from the creation of unsafe conditions or nuisances, the following conditions shall be considered prior to the granting of any permit for an aircraft landing strip.
- B. Conditions.
 - (1) Location. Potential airstrips should be located such that they are a minimum of 300 feet from any dwelling, and also not more than 10 dwellings are within 500 feet of any portion of the actual runway.
 - (2) Posted signs. Airstrips shall be posted with signs of sufficient quantity to alert any person entering the area that aircraft may be present.
 - (3) No dwellings shall be in the immediate clear area of the ends of the airstrip.
 - (4) All commercial development proposed to be located on the airstrip property must be allowed in that district.
 - (5) Referral to state. Prior to acting on any aircraft landing strip permit request, the Municipal Board shall, by resolution, request the NYSDOT Commissioner to review the proposed airstrip and make a recommendation in accordance with § 249 of the General Business Law.
- C. Permit requirements. All requests for permits shall include a description of the type and quantity of aircraft using the facilities, frequency of flights, a map drawn to scale showing the airstrip and prevailing winds as well as dwellings in the neighborhood and proposed commercial development.

§ 300-66. Topsoil/excavation.

- A. Purpose. During the construction of a foundation, general landscaping or any other extensive excavating project, a person, firm, corporation, etc., shall not strip, excavate or otherwise remove soil/gravel unless the following conditions are met:
- B. Conditions.
 - (1) Topsoil. Topsoil is replenished or left with sufficient amounts to support future development needs.
 - (2) Steep slopes. The creation of steep slopes shall be limited to the greatest extent possible.

60. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Groundwater runoff. Runoff will not be caused to flow into neighboring properties, to pool, or cause erosion. A stormwater drainage plan for both the construction period and the long term should be considered when slope and soil types dictate. A minimum amount of siltation should be allowed to leave the site.
- (4) Time requirement. All of the above conditions shall be met within one year from the time the project started. However, the Municipal Board shall have the power to grant extensions or shorten the time frame for just cause after receiving a written request which includes the reasons for the request.

§ 300-67. Day-care centers.

- A. Purpose. The purpose of this section is to provide guidelines for day-care centers in order to insure the safety and welfare of those being cared for while at the same time providing protection to existing neighborhoods.
- B. Conditions. The following conditions shall be considered by the permitting board for all day-care centers requiring a special use permit:
 - (1) Lot size.
 - (2) Physical plant.
 - (3) Load and unload areas.
 - (4) Outside recreation.
 - (5) Signs.
 - (6) Fire safety.
 - (7) Educational services to be provided.
 - (8) Meals.
 - (9) Adjacent uses.
 - (10) Buffers.
 - (11) Other conditions.
- C. Preexisting conditions. Day-care centers existing at the time of passage of this section shall only be subject to review by hearing under this section if the board responsible for administering this section becomes aware of obvious noncompliance with conditions of this section.

§ 300-68. Recreational vehicle/trailer storage.

- A. Purpose. To encourage aesthetically pleasing residential neighborhoods, this section allows for the reasonable control of recreational vehicles.
- B. Conditions. The following conditions shall be met:

- (1) Number. A maximum of three recreational vehicles, trailers or other similar vehicles may be stored outside on each parcel or series of contiguous parcels under single ownership.
 - (2) Location. All recreational vehicles/trailers, etc., shall be stored in rear yards whenever it is possible and shall not be stored in a front yard. Nor shall they be allowed to become a nuisance. All area requirements of the district in which the vehicle is stored shall be met. Area variances shall be requested where these rules cannot be met.
- C. Preexisting vehicles. All recreational vehicles existing at the time of enactment of this chapter shall be subject to the regulations of this section six months from the date of notification in writing.

§ 300-69. Storage structures.

- A. Purpose. Storage structures are regulated to insure that they are properly located so as to protect the rights associated with neighboring properties with respect to visibility, light and air movement, fire safety and aesthetics.
- B. Administration. All storage structures shall, as a minimum, require a permit by right while storage sheds over 150 square feet which are located in a residential district shall require a special use permit. Multiple storage sheds shall be aggregately considered to determine if the one-hundred-fifty-square-foot requirement is surpassed.
- C. Conditions.
- (1) Area requirements. The accessory area requirements for each district shall be met.
 - (2) Lakeshore regulations. Refer to the supplemental section on lakeshore regulations for additional requirements for any storage shed which is proposed to be located on a parcel adjacent to a lake, § 300-47.
 - (3) Vacant lots. In residential districts a storage structure may be placed on a vacant lot if it meets appropriate yard requirements and if it is accessory to a primary use located within 200 feet. For all other districts, storage structures need not be accessory to a residential unit.
 - (4) Truck storage. For any truck, semitrailer or other similar unit to be used for storage, a special use permit shall be required. In residential districts, trucks and similar units shall only be allowed if they will have a negligible affect on the neighborhood, is: out of sight, etc.

§ 300-70. Seasonal recreation camps.

- A. Purpose. This section is created for the purpose of preserving rural character and providing protection for existing uses. [Amended 6-13-2007 by L.L. No. 2-2007]
- B. Conditions. The following conditions shall apply: [Amended 6-13-2007 by L.L. No. 2-2007]

- (1) Lot size. A minimum lot size of five acres shall be required, depending on soils, character of neighborhood, development, density, etc.
 - (2) Structure location. A minimum setback of 200 feet shall be required.
 - (3) Construction. The type, size and method of construction shall be considered. Mobile homes/manufactured homes and truck bodies shall not be used for seasonal recreation camps.
 - (4) Buffer zones. Existing natural buffers should be retained to the greatest degree possible, and new buffers should be considered where it is apparent that they are necessary.
 - (5) Year-round conversion. The conversion of seasonal camps to year-round housing or any other allowed uses shall be allowed only by special use permit. Such structure must otherwise be in compliance with existing zoning and uniform building codes.
 - (6) Access to public road. Seasonal camps must have access to a public roadway.
 - (7) Other requirements. Other reasonable conditions may be required as deemed necessary.
- C. Preexisting parcels. This section shall only apply to parcels of land which are purchased after the effective date of this chapter.

§ 300-71. Trash storage.

- A. Purpose. It is the intent of this section to minimize safety, health and aesthetically related problems by controlling the storage of trash in accordance with the needs of each district. This also applies to any unsightly conditions adversely affecting the general public, including the value of property therein. [Amended 6-13-2007 by L.L. No. 2-2007]
- B. Conditions for temporary storage. No outside storage or accumulation of garbage, crates, rubbish, refuse or debris shall be permitted at any time, and all such garbage, crates, rubbish, refuse or debris shall be kept inside the building or buildings on the premises or in a self-contained enclosure (example only — dumpster). [Amended 6-13-2007 by L.L. No. 2-2007]
- (1) These conditions shall apply to all trash existing at the time of enactment of this chapter.
 - (2) Garbage/trash may be at roadside no more than 12 hours prior to scheduled pickup.
- C. Metal dumpsters. All dumpsters located on a site for 30 days or more shall comply with the following regulations:
- (1) Location. Dumpsters shall be located on private property at a location approved by the Zoning Officer.
 - (2) Buffer. A suitable buffer may be required.

- (3) Covers. All dumpsters shall have tops which shall be utilized.
- (4) Preexisting. Dumpsters existing at the time of enactment of this chapter shall comply with dumpster regulations specified by the permitting board within six months from notification. Compliance requests may be appealed to the Zoning Board of Appeals.

§ 300-72. Kennels. [Amended 12-13-2000 by L.L. No. 1-2000]

- A. Purpose. The purpose of this section is to promote the general welfare of the residents of the Town of Pomfret by regulating the location and operation of kennels within the Town's border as defined herein, and to further augment the requirements set forth in the Zoning Chapter of the Town of Pomfret. In case of conflict, the provisions of this section shall supersede the general provisions as set forth in the Zoning Chapter of the Town of Pomfret.
- B. Definitions. For the purpose of this section, the following definitions apply:

ADEQUATE FOOD — The provisions at suitable intervals of not more than 24 hours, unless the dietary requirements of the species require a different interval, of a quantity of wholesome foodstuffs, suitable for the species and age, sufficient to maintain a reasonable level of nutrition in each animal, all of which foodstuff is served in a clean, safe receptacle, dish or container.

ADEQUATE HOUSING — The continuous provision of a sanitary facility, protection from the extremes of weather conditions, proper ventilation and appropriate space depending on the breed of dog, as defined by the regulations of the USDA as revised.

ADEQUATE WATER — The continuous provision of clean, potable water in safe receptacle, dish or container.

ANIMAL SHELTER — A facility used to house or contain animals, which is owned, operated or maintained by an incorporated humane society, animal welfare society or society for the prevention of cruelty to animals.

CODE ENFORCEMENT OFFICER — The person employed as the official enforcement officer of this section and any other article pertaining to the Zoning Chapter and regulations in the Town of Pomfret, and any other rules or regulations promulgated pursuant thereto.

DOG CONTROL OFFICER — The person employed as the official enforcement officer of this section and any other article pertaining to dogs and their control in the Town of Pomfret, and any other rules or regulations promulgated pursuant thereto.

GROOMING PARLOR — A facility used primarily for the grooming and individual hygiene of dogs, at which dogs may also be housed or harbored on a temporary basis.

KENNEL — Any lot or premises housing or harboring more than four dogs, more than four months of age, for any purpose. A dog will be presumed to be more than four

months of age unless the owner can prove otherwise. [Amended 6-13-2007 by L.L. No. 2-2007]

PET SHOP — A retail shop primarily engaged in the business of selling animals and maintaining, keeping or possessing any animal for which a permit or license may be required by the Town of Pomfret and/or the State of New York, under any local laws or the New York State Agricultural and Markets Law.

POUND — A facility operated by the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned or unwanted animals.

C. Requirements for operating kennels. All persons operating a new kennel in the Town of Pomfret must apply for and obtain a special use permit prior to commencing operations. All persons planning to operate a kennel on their own property, or to lease their property for the operation of a kennel in the Town of Pomfret, must apply for a special use permit.

D. Special use permit.

(1) A special use permit for the operation of a kennel may be issued to an applicant for property located in a district where operation of a kennel is currently permitted under the Town of Pomfret Zoning Chapter district regulations. Such application shall include:

- (a) A diagram which displays the kennel buildings and all other inhabited dwellings within 1,000 feet of the kennel building(s);
- (b) The location and type of sound and vision buffers to be installed around the kennel buildings and any running area provided for the animals;
- (c) The maximum number and breed of dogs to be kept in the kennel(s);
- (d) The method of disposing of and controlling waste produced by the animals in the kennel; and
- (e) Any other information deemed appropriate by the applicant and/or the Town of Pomfret Zoning Board of Appeals, as it relates to the consideration of factors as set forth in this chapter.

(2) In reviewing the application for a special use permit, the Town of Pomfret Zoning Board of Appeals shall consider the following:

- (a) Whether adequate space for housing and running the animals is being provided;
- (b) Whether the buffers being provided will adequately muffle the sounds made by the type and number of animals to be housed at the kennel;
- (c) Whether the means of disposing of waste is adequate;

- (d) The findings of an on-site inspection, should the Town of Pomfret Zoning Board of Appeals think an inspection is necessary;
 - (e) The closeness to adjacent properties and effect on character of a neighborhood; and
 - (f) Any other factors which will protect the health, safety and well-being of the residents of the Town of Pomfret.
- (3) All other provisions of the Town of Pomfret Zoning Chapter relating to the application and review of special use permits, not inconsistent with this section, shall be applicable to special use permits for kennels.
- E. Rules of a special use permit for the operation of a kennel.
- (1) Any municipal dog pound, not-for-profit animal shelter or veterinarian are exempt from the need to obtain a special use permit for the operation of a kennel.
 - (2) Preexisting kennels, pet shops and grooming parlors, as defined herein, prior to the passage of this chapter shall not be subject to regulations under this section generally. However, if an existing kennel becomes a nuisance, any of the conditions of this chapter can be imposed after public hearing.
 - (3) Such special use permit for the operation of a kennel shall not be transferable.
 - (4) The Town may refuse to grant a special use permit for the operation of a kennel to an applicant, or may revoke such permit, if any of the following are found:
 - (a) There is a material and deliberate misstatement in the application for the special use permit for the operation of a kennel.
 - (b) The applicant has been convicted of violating any federal, state or local law relating to the disposition and/or treatment of animals.
 - (c) The applicant has failed to provide adequate food, housing, water or sanitary conditions for one or more animals under the control of the applicant, as defined by this chapter, the New York State Agricultural and Markets Law and the USDA, as revealed in the inspection procedures as outlined below.
 - (5) Issuance and the acceptance of a special use permit for the operation of a kennel grants upon the Town the authority to conduct inspections of the kennel premises after providing twenty-four-hour prior notice to the permit holder or operator by either the Dog Control Officer or Code Enforcement Officer in person or in writing.
 - (a) Said inspection will be conducted by the Dog Control Officer and/or Code Enforcement Officer.
 - (b) If the inspection reveals a violation of any of the provisions of the special use permit for the operation of a kennel or of this section, the Town of Pomfret may send a licensed veterinarian of its choice to the premises who will have the authority to determine whether the kennel is providing adequate food,

water and maintenance to the animals located on the premises. If such food, water or maintenance is found to be inadequate, the special use permit may be suspended or revoked as provided for in Subsection G.

- (6) The Dog Control Officer or Code Enforcement Officer shall make or cause to be made as many inspections and reinspections as are necessary for the enforcement of this section.
 - (7) Persons in charge of a kennel, as defined herein, shall be responsible for maintaining a written record of all animals received and of their final dispositions. Such written record shall be maintained for four years, and shall be made available to the Dog Control Officer or Code Enforcement Officer upon request.
- F. Dog licenses. The act of obtaining and possessing a special use permit for the operation of a kennel shall not exempt dog owners from any annual licenses, as required by any other law, ordinance or regulation.
- G. Violations, suspensions and revocations.
- (1) If the Town Dog Control Officer or Code Enforcement Officer makes an inspection and discovers a violation of this section, he will notify the permit holder or operator of such violation by means of an inspection report or other written notice. The notification shall:
 - (a) Set forth the specific violations found.
 - (b) Establish a specific period of time for the correction of the violations found, such time to be not less than three days.
 - (c) State that failure to comply with any notice issued in accordance with this section will result in immediate suspension of the permit.
 - (d) State that an opportunity for appeal from inspection findings will be provided if a written request for a hearing is filed with the Town of Pomfret within five days.
 - (e) Any hearing required under Subsection G shall be before the Pomfret Zoning Board of Appeals.
 - (2) Notices provided for under this section shall be deemed to have been properly served when the original of the inspection report form or other notice has been delivered personally to the permit holder or operator, or when such notice has been sent by registered mail, return receipt requested, to the last known address of the permit holder or operator. A copy of such notice shall be filed with the Town Clerk.
 - (3) Permits may be suspended temporarily by the Town of Pomfret for failure of the holder or operator to comply with the requirements of this section or of other applicable laws, ordinances or regulations.
 - (a) Whenever a permit holder or operator has failed to comply with any notice issued under the provisions of this section, the permit holder or operator shall be notified in writing that the permit is, upon service of notice, immediately suspended and that an opportunity for a hearing will be provided if a written

request for a hearing is filed with the Town of Pomfret Zoning Board of Appeals by the permit holder or operator.

- (b) If deemed necessary by the Town of Pomfret, such notice shall state that the permit is immediately suspended and all operations are to be immediately discontinued. Any person to whom an order is issued shall comply immediately therewith.
- (4) For serious or repeated violations of any of the requirements of this section, or for interference with the Dog Control Officer or Code Enforcement Officer from performing these duties, the special use permit for the operation of a kennel may be permanently revoked.
 - (a) Prior to such action, the Dog Control Officer or Code Enforcement Officer shall notify the permit holder or operator, in writing, stating the reasons for which the permit is subject to revocation and advising them that the permit shall be permanently revoked at the end of five days following the service of such notice, unless a request for a hearing is filed with the Town of Pomfret Zoning Board of Appeals by the permit holder or operator within such five-day period.
 - (b) A permit may be suspended for cause, pending its revocation or a hearing relative thereto.
- (5) The hearings provided for in this section shall be conducted at a time and place designated by the Town of Pomfret Zoning Board of Appeals. Based upon the record of such hearing, the Town of Pomfret Zoning Board of Appeals shall make a finding and shall issue a written decision which shall be furnished to the permit holder or operator. This section shall not preclude any other rights or remedies the Town may have in any court of competent jurisdiction for such other and further relief as may be appropriate.
- H. Penalties. Failure to comply with the terms of the special use permit, to obtain a special use permit as required by this section, or to comply with the inspection requirements of this section shall be punishable by a maximum penalty of \$250 and less than 15 days in jail, or as from time to time amended by the Town Board of the Town of Pomfret. Each week such violation exists shall constitute a separate and distinct offense.

§ 300-73. Industrial performance standards.

- A. Purpose. It is the intent to maintain a quality environment that will lead to the development and maintenance of a well-planned industrial area which will be attractive to sophisticated industrial establishments and will enhance the general welfare of the residents and assure both users and employees thereof of a safe and stable working area.
- B. The standards of performance are:
 - (1) Noise. It shall be unlawful for any person to permit the emission of measurable noise, as measured at the edge of the manufacturing district, to exceed 70 decibels during the periods between 6:00 a.m. and 10:00 p.m. or 60 decibels during the

periods between 10:00 p.m. and 6:00 a.m. The sound level may exceed these established sound levels for a period not to exceed six minutes during any 60 minutes by not more than seven decibels. Noises shall be muffled so as not to become unreasonably offensive due to intermittence, beat frequency, high frequency or other means.

- (2) Odor. It shall be unlawful for any person to permit the emission of any odor that is unreasonably offensive.
- (3) Dust and dirt. It shall be unlawful for any person to permit or cause the escape of such quantities of soot, cinders or fly ash as to exceed 0.3 grains per cubic foot of the flue gases when measured at the top of the stack. Other kinds of dust, dirt and other particulate matter shall not be in excess of 3.0 grains per cubic foot of air as measured at the top of the stack and corrected to standard conditions.
- (4) Parking and driveways. There shall be no off-site parking of motor vehicles. Each land user subject to this Article VI must provide sufficient, suitable, on-site parking space to prevent any necessity for off-site parking. Drive and traffic access systems are allowed in all yard areas. However, when any yard sides on land that allows residential development, the drives or traffic access facilities must be placed as far from the exterior line as practical. No parking shall take place in any required yard area.
- (5) Vibration. It shall be unlawful for any person to permit or cause, as a result of normal operations, a vibration which creates a displacement of plus or minus 0.003 of one inch as measured at the edge of the manufacturing district.
- (6) Noxious gases. It shall be unlawful for any person to permit the escape of such quantities of noxious acids, fumes or gases in such manner and concentration as to endanger the health, comfort or safety of any person or to cause injury or damage to property, business or vegetation, or which causes any excessive soiling at any point beyond the property line.
- (7) Glare. It shall be unlawful for any person to carry on a process such that a direct or sky-reflected glare, whether from floodlights or from high temperature process such as combustion or welding or other such process is unreasonably offensive when visible outside the manufacturing district. No lighting of signs or buildings shall be allowed unless it is of such low intensity or brilliance that it does not cause glare or impair the vision of the driver of any motor vehicle.
- (8) Fire and safety hazards. All buildings, operations, storage, waste disposal, etc., shall be in accordance with applicable provisions of the latest edition of the New York State Uniform Fire Prevention and Building Codes. All activities and all storage of flammable and explosive material at any point shall be provided with adequate safety devices against the hazards of fire and explosion and adequate fire-fighting and fire-suppression equipment and devices.
- (9) Open storage.

- (a) It shall be unlawful for any person to permit the open storage of more than incidental quantities of any materials derived from the given industrial operation without screening, such as a fence, hedge or other barrier, at least seven feet high, that obscures storage to persons passing in a normal manner from a public way or from any property line facing a public right-of-way. The following is the list of materials requiring screening:
 - [1] New materials.
 - [2] Component parts.
 - [3] Work in progress.
 - [4] Finished products.
 - [5] Scrap or waste material.
 - (b) The location of said screening shall be subject to the front, side and rear yard restrictions; provided, however, natural barrier screening, decorative planting, etc., shall not be subject to these restrictions.
- (10) Landscaping. A planted visual barrier may be required to be maintained in yard areas that abut land upon which residential structures exist or are permitted at the time of the special use permit application except when natural or physical man-made barriers exist. This planting barrier or visual screen shall have a width of no less than three feet. It shall be of such plant materials that within a reasonable period of time (five years) the vegetation barrier will provide a high degree of separation and privacy on a year-round basis.
- (11) District lighting. All lighting shall be completely shielded from traffic on any public right-of-way and from occupied structures located outside the manufacturing district, if within a distance of 1,500 feet.

§ 300-74. Bed-and-breakfast.

- A. Purpose. The conversion of existing dwellings to bed-and-breakfast uses shall be regulated in accordance with this section for districts where conversions are specifically listed as being allowed uses. The purpose of this section is to provide guidelines which will insure that any conversions will not permit a significant adverse change in a residential neighborhood.
- B. Conditions. The following conditions shall be considered by the permitting board for attachment to the permit.
- (1) Lot size. For each bedroom proposed to be utilized by a traveler, there shall be an additional lot area of 1,000 square feet over the minimum lot size required by the district.
 - (2) Number of bedrooms. A maximum of one bed-and-breakfast bedroom shall be allowed for 760 square feet of livable floor space with a maximum of five bedrooms allowed.

- (3) Parking. Convenient off-street parking shall be available at a rate of one space per proposed bed-and-breakfast bedroom. These spaces shall be located beyond the minimum front yard setback line. Natural or artificial buffers may be required as necessary by the permitting board.
- (4) External modifications. No external modifications of a structure shall be allowed in conjunction with the creation of a bed-and-breakfast. All internal modifications shall be accomplished in accordance with the New York State Uniform Fire Prevention and Building Code.
- (5) Existing structures. Only dwelling units existing at the time of enactment of this section shall be eligible for conversion to a bed-and-breakfast. Garages or accessory buildings shall not be utilized.
- (6) Signs. In addition to all requirements of the supplemental sign section, signs shall be constructed of natural materials and shall not be illuminated. Other reasonable conditions may be imposed in order for the sign to blend into the neighborhood.
- (7) Location. A bed-and-breakfast shall only be established on a state or county road in residential districts where listed as a permitted use. They may be located anywhere in business districts where allowed.
- (8) Nuisances. Outside activities shall not be permitted by guests where it will create a nuisance or in any way alter the character of the neighborhood.
- (9) Other conditions. Any other reasonable condition as deemed necessary by the permitting board shall be permissible.

§ 300-75. Professional offices.

Professional offices may be allowed by special use permits in accordance with the following specific conditions:

- A. Parking. Adequate off-street parking must be provided in order to handle peak parking. Adequate space for expansion of parking and/or the maneuvering of vehicles must be provided.
- B. Traffic safety. The ingress/egress system must be designed so as to minimize potential traffic safety problems.
- C. Signs. Only one sign for the purpose of advertising the business shall be allowed on the premises and it shall be in accordance with the sign section. Additionally, it shall be not higher than five feet in height to the top of the sign.
- D. Buffer. A proper buffer zone shall be provided to protect adjacent properties if deemed necessary.
- E. Hours. The hours and days of operation may be included as a condition for the granting of the special use permit.

- F. Lot size. The overall size of the property must be such that it is capable of supporting the professional office operations and any related activity while at the same time maintaining appropriate open space.
- G. Neighborhood. The general character of the neighborhood must not be substantially changed by the presence of professional offices nor shall there be a resultant devaluation of adjoining properties.

§ 300-76. Temporary retail outlet.

- A. Purpose. Temporary retail outlets provide needed products at convenient locations. Assuring that these temporary businesses are conducted safely and in an aesthetically acceptable manner are the primary purposes of this section.
- B. Conditions. Prior to being granted a zoning permit, the Enforcement Officer shall insure that the following conditions are met:
 - (1) Signs. All sign requirements of the supplemental section on signs shall be complied with.
 - (2) Location. Permission in writing from the owner of the property on which the temporary retail outlet is to be located shall be provided prior to being granted a zoning permit.
 - (3) Safety. Safe entry and exit to and from the site must be assured along with sufficient off-street parking.
 - (4) Cleanup. At no time during the operation shall any junk or debris be allowed to accumulate. At the conclusion of a selling period the site shall be restored to its original state. Displaying of retail goods shall be accomplished in a neat and orderly fashion.
 - (5) Hours. The dates and hours of operation shall be clearly defined.
 - (6) Sale items. The type of retail goods to be sold shall be specified along with the quantity.
- C. Temporary retail outlets are permitted in the B2, I1 and I2 Districts.⁶¹
- D. Administration. In districts where temporary retail outlets are specified as being allowed, the Enforcement Officer shall grant a by right zoning permit after all conditions in Subsection B, above, have been met. Said permit shall cover as a maximum one-year period only.

§ 300-77. Restaurants.

- A. Purpose. Restaurants are regulated in order to promote safe, appealing establishments with minimal nuisances present.

61. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

B. Permanent conditions. The following conditions must be met as required by the permitting board in order to receive the special use permit.

- (1) Parking. See supplemental section on parking, § 300-48, to determine the number of off-street parking spaces required. The location and layout of the parking spaces may be specified in the permit.
- (2) Traffic safety. The entrance and exit location and size shall be safely designed with minimal obstructions. Pedestrian safety shall also be considered.
- (3) Nuisances. Noises from electric motors, compressors, etc., or glare from lighting shall be minimal.
- (4) Signs. All sign regulations as specified in the supplemental section shall be complied with fully.
- (5) Decks. Any deck, patio, porch or similar area utilized by customers shall be approved and in accordance with all area requirements.
- (6) Trash. All trash shall be located inconspicuously and in well-maintained containers that minimize the chance for spillage, unhealthy or unsightly conditions.
- (7) Buffers. As is required by the permitting board, appropriate buffers may be required which shield adjacent properties from any adverse conditions associated with the restaurant (e.g., parking lots, lighting, etc.).
- (8) Entertainment. The applicant shall specify the type of entertainment to be utilized, location in building, maximum frequency and hours of entertainment. No nuisance shall be permitted; and if it becomes apparent that any of these provisions are creating a nuisance, a public hearing shall be required to reevaluate the original application.
- (9) Other. Any other condition as deemed reasonable and necessary may be required by the permitting board.

§ 300-78. Vehicle sales.

A. Purpose. For the purpose of promoting safe and aesthetically pleasing motor vehicle sales lots, the following conditions are proposed.

B. Conditions.

- (1) Lot size. Land area must be sufficient to handle vehicles, ingress and egress, and off-street parking.
- (2) Location. All vehicles being offered for sale shall be set back a minimum of 25 feet from the street edge and neatly arranged in an organized manner. Vehicles not offered for sale shall be located behind the main building setback line and, if necessary, it may be required that they be fenced in so as not to be visible.

- (3) Signs. All signs and advertising devices must comply with the supplemental sign section.
- (4) Traffic safety. Ingress and egress must be safely located.

§ 300-79. Commercial shooting ranges.

- A. Purpose. In order to promote safety and the general welfare of the public and to maintain the quality of neighborhoods, the following regulations are to be enforced for all commercial ranges. New ranges shall be allowed only in accordance with the following conditions.
- B. Conditions. The operation of a commercial range, such as a shooting club, shall be subject to the following conditions:
 - (1) Safety considerations. All ranges shall be so located and directed so as to present the safest situation possible with respect to the existing neighborhood. Appropriate signage shall be posted to warn people of the existence of a shooting range.
 - (2) Time of day. Ranges shall only be utilized for target practice for the period specified in the permit.
 - (3) Character of neighborhood. The density, types of structures, etc., shall be considered.
 - (4) Other conditions. Unlisted conditions deemed necessary.

§ 300-80. Vehicle repair/auto body repair shop.

- A. Purpose. In order to preserve the character of neighborhoods and promote safe and aesthetically pleasing repair shops, all such shops shall be reviewed in accordance with the conditions which follow:
- B. Conditions. The following conditions shall be met:
 - (1) Storage of vehicles awaiting repairs.
 - (a) One to three vehicles stored outside awaiting repairs shall be kept in one contiguous location and neatly arranged.
 - (b) Where four to 10 vehicles are temporarily stored outdoors they shall be screened by an appropriate fence which makes it impossible to view the vehicles from adjacent roads or properties.
 - (c) The temporary storage of over 10 vehicles outdoors shall be prohibited.
 - (2) Hours of operation. The hours of operation shall be derived so as to limit the noise during nonbusiness hours.

- (3) Area requirements. The lot on which the shop is to be located shall be a minimum of 1 1/2 times the minimum lot size for the appropriate district (other use category).
- (4) Buffers. Where deemed necessary, appropriate buffers shall be required.
- (5) Trash. The supplemental section on trash shall be complied with.
- (6) Other conditions. Conditions listed in supplemental section on general conditions, § 300-37, may be required where deemed appropriate.

C. Preexisting uses.

- (1) Expansion and enlargements. All expansions or enlargements of repair shops in existence prior to enactment of this chapter shall be subject to regulations of this section.
- (2) Preexisting uses. Where it is determined at a public hearing held by the Municipal Board that a nuisance exists with a preexisting use, then the provisions of Subsection B(1), Vehicle storage; Subsection B(2), Hours of operation; and Subsection B(5), Trash, can be required to be enforced within a reasonable time period.

§ 300-81. Motor vehicle service stations.

A. Purpose. Gas stations as defined in the definition section, § 300-6, are regulated in this section to promote safe and properly located stations which are visually attractive.

B. Conditions. The following conditions shall be considered:

- (1) Entrance/exit. No public garage, or motor vehicle service station, or private garage for more than five vehicles shall have a vehicular entrance closer than 200 feet to an entrance to a church, school, theater, hospital, public park, playground or fire station. Such measurement shall be taken at the shortest distance between such entrances across the street, and along the street frontage if both entrances are on the same side of the street or within the same square block.
- (2) Location. All motor vehicle service stations shall be so arranged and all gasoline pumps shall be so placed as to require all servicing on the premises and outside the public way; and no gasoline pump shall be placed closer to any side property line than 50 feet.
- (3) Storage of vehicles awaiting repairs.
 - (a) One to three vehicles stored outside awaiting repairs shall be kept in one contiguous location and neatly arranged.
 - (b) Where four to 10 vehicles are temporarily stored outdoors, they shall be screened by an appropriate fence which makes it impossible to view the vehicles from adjacent roads or properties.

- (c) The temporary storage of over 10 vehicles outdoors shall be prohibited.
- (d) All parts shall be enclosed within a screened/fence area or stored inside of a building.
- (4) Abandoned tanks and pumps. All abandoned tanks and pumps shall be secured in accordance with the New York State Uniform Fire Prevention and Building Code.

§ 300-82. Private swimming pools.

- A. Purpose. The primary purpose of this section is to promote the safe installation and maintenance of private swimming pools.
- B. Conditions. All installations shall meet the requirements of the New York State Uniform Fire Prevention and Building Code. Private swimming pools shall be required to meet the following conditions.⁶²
 - (1) Permits. It shall be unlawful to maintain, construct, erect, install, modify, alter, demolish or change any swimming pool or to permit any such acts without first obtaining a zoning permit, and then only as an accessory to a dwelling for the private use of the owners or occupants of such dwelling and their families and guests.
 - (2) Fences. Every permanent private swimming pool, and every portable private swimming pool less than four feet high, now existing or hereafter constructed, installed, established or maintained, the wall or supporting structure of which is not at least four feet above ground level, shall be enclosed with a fence of durable construction of a type approved by the Building Inspector of not less than four feet in height or by a wall or a building or structure. A fence of similar construction and height erected on the lot lines, which, with additional fencing of any open areas completely encloses the pool area, shall be deemed a sufficient enclosure for the purpose of this section. All pools (in ground and above ground) shall be provided with one or more substantial, self-closing and self-latching gates or doors of at least the height of the fence, and said enclosure and gates or doors thereof shall be so designed and constructed as to reasonably prevent any person from gaining access beneath, through or over the same. Every gate or door of such fence shall be kept securely locked at all times when the pool is not in use. Every wading pool shall be enclosed by durable wall, barrier or fence as described unless such outdoor wading pool is:
 - (a) Emptied when not in use or unattended; or
 - (b) Covered with a suitable, strong protective covering fastened or locked in place when not in use or unattended.

62. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (3) Health standards. Such pool shall be maintained in a manner sufficient to meet the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.
 - (4) Drainage. It shall be insured that provisions for the drainage of such pools are adequate and will not interfere with the public water supply system or existing sanitary facilities.
 - (5) Noise. Such pool shall be equipped with an integral filtration system and filter pumps or other mechanical devices which shall be so located and constructed as not to interfere with the peace, comfort and repose of the occupant of any adjoining property.
 - (6) Setback requirements. Pools shall be installed in accordance with the area requirements of the appropriate district.
- C. Preexisting uses. Pools in existence prior to the enactment of this chapter shall, within two months, comply with the conditions in previous Subsection B(2), Fences; B(3), Health standards; and B(4), Drainage.

§ 300-83. Wind energy facilities. [Amended 6-22-2007 by L.L. No. 3-2007]

- A. Purpose. The Town Board of the Town of Pomfret adopts this section to promote the effective and efficient use of the Town's wind energy resource through wind energy conversion systems (WECS), and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized.
- B. Authority. The Town Board of the Town of Pomfret adopts this section under the authority granted by:
- (1) Article IX of the New York State Constitution, § 2(c)(6) and (10).
 - (2) New York Statute of Local Governments § 10(1), (6) and (7).
 - (3) New York Municipal Home Rule Law § 10, Subdivision 1(i) and (ii), and § 10, Subdivision 1(ii)a(6), (11), (12) and (14).
 - (4) The supersession authority of New York Municipal Home Rule Law § 10, Subdivision 1(ii)d(3).
 - (5) New York Town Law, Article 16, Zoning.
 - (6) New York Town Law § 130, Subdivision 1, Building Code, Subdivision 3, Electrical Code, Subdivision 5, Fire prevention, Subdivision 7, Use of streets and highways, Subdivision 7-a, Location of driveways, Subdivision 11, Peace, good order and safety, Subdivision 15, Promotion of public welfare, Subdivision 15-a, Excavated lands, Subdivision 16, Unsafe buildings, Subdivision 19, Trespass, and Subdivision 25, Building lines.
 - (7) New York Town Law § 64, Subdivision 17-a, protection of aesthetic interests, and Subdivision 23, General powers.

C. Findings. The Town Board of the Town of Pomfret finds and declares that:

- (1) Wind energy is an abundant, renewable and nonpolluting energy resource of the Town and its conversion to electricity may reduce dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources.
- (2) The generation of electricity from properly sited wind turbines, including small systems, can be cost effective, and in many cases, existing power distribution systems can be used to transmit electricity from wind-generating stations to utilities or other users, or on-site consumption can be reduced.
- (3) Regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety and welfare of neighboring property owners and the general public.
- (4) Wind energy facilities represent significant potential aesthetic impacts because of their large size, lighting and shadow flicker effects.
- (5) If not properly regulated, installation of wind energy facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods.
- (6) Wind energy facilities may present a risk to bird and bat populations if not properly sited.
- (7) If not properly sited, wind energy facilities may present risks to the property values of adjoining property owners.
- (8) Wind energy facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties.
- (9) Construction of wind energy facilities can create traffic problems and damage local roads.
- (10) Wind energy facilities can cause electromagnetic interference issues with various types of communications.

D. Permits required.

- (1) No wind energy facility shall be constructed, reconstructed, modified or operated in the Town of Pomfret except in compliance with this section.
- (2) No WECS shall be constructed, reconstructed, modified or operated in the Town of Pomfret except in a Wind Overlay Zone, pursuant to an application for rezoning and special use permit approved pursuant to this section.
- (3) No wind measurement tower shall be constructed, reconstructed, modified or operated in the Town of Pomfret except pursuant to a special use permit issued in accordance with this section.

- (4) No small wind energy conversion system shall be constructed, reconstructed, modified or operated in the Town of Pomfret except pursuant to a wind energy permit issued pursuant to this section.
 - (5) Notwithstanding any other provision of this Zoning Chapter, special use permits for WECS shall be issued by the Town Board.
 - (6) This section shall apply to all areas of the Town of Pomfret.
 - (7) Exemptions. No permit or other approval shall be required under this section for WECS utilized solely for agricultural or farm operations in a state or county agricultural district, as long as the facility is set back at least 1 1/2 times its total height from a property line and does not exceed 120 feet in height. Towers over 120 feet in total height utilized solely for agricultural operations in a state or county agricultural district shall apply for a special use permit in accordance with this chapter, but shall not require a height variance. Prior to the construction of a WECS under this exemption, the property owner or a designated agent shall submit a sketch plan or building permit application to the Town to demonstrate compliance with the setback requirements.
 - (8) Transfer. No transfer of any wind energy facility or special use permit, nor sale of the entity owning such facility, including the sale of more than 30% of the stock of such entity (not counting sales of shares on a public exchange), will occur without prior approval of the Town, which approval shall be granted upon written acceptance of the transferee of the obligations of the transferor under this section, and the transferee's demonstration, in the sole discretion of the Town Board, that it can meet the technical and financial obligations of the transferor. No transfer shall eliminate the liability of the transferor nor of any other party under this section unless the entire interest of the transferor in all facilities in the Town is transferred and there are no outstanding obligations or violations.
 - (9) Notwithstanding the requirements of this section, replacement in kind or modification of a wind energy facility may occur without Town Board approval when:
 - (a) There will be no increase in total height;
 - (b) There will be no change in the location of the WECS;
 - (c) There will be no additional lighting or change in facility color; and
 - (d) There will be no increase in noise produced by the WECS.
- E. Definitions. As used in this section, the following terms shall have the meanings indicated:

AGRICULTURAL or FARM OPERATIONS — The land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a "commercial horse boarding operation" as defined in Subdivision 13 of New York Agriculture and Markets Law § 301 and "timber

processing" as defined in Subdivision 14 of New York Agriculture and Markets Law § 301. Such farm operation may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other.

EAF — Environmental assessment form used in the implementation of the SEQRA as that term as defined in Part 617 of Title 6 of the New York Codes, Rules and Regulations.

RESIDENCE — Any dwelling suitable for habitation existing in the Town of Pomfret on the date SEQRA for the specific application is completed, including seasonal homes, hotels, hospitals, motels, dormitories, sanitariums, nursing homes, senior housing, schools or other buildings used for educational purposes. A residence may be part of a multidwelling or multipurpose building, but shall not include correctional institutions.

SEQRA — The New York State Environmental Quality Review Act and its implementing regulations in Title 6 of the New York Codes, Rules and Regulations, Part 617.

SITE — The parcel(s) of land where the wind energy facility is to be placed. The site could be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a wind energy facility or has entered an agreement for said facility or a setback agreement and received the required variance shall not be considered off-site.

SMALL WIND ENERGY CONVERSION SYSTEM (SMALL WECS) — A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 101 kW and which is intended to primarily reduce consumption of utility power at that location.

SOUND PRESSURE LEVEL — The level which is equaled or exceeded a stated percentage of time. An L_{10-50} dBA indicates that in any hour of the day 50 dBA can be equaled or exceeded only 10% of the time, or for six minutes. The measurement of the sound pressure level can be done according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11) or other accepted procedures.

TOTAL HEIGHT — The height of the tower and the furthest vertical extension of the WECS.

WIND ENERGY CONVERSION SYSTEM (WECS) — A machine that converts the kinetic energy in the wind into a usable form (commonly known as a "wind turbine" or "windmill").

WIND ENERGY FACILITY — Any wind energy conversion system, small wind energy conversion system or wind measurement tower, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

WIND MEASUREMENT TOWER — A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

WIND OVERLAY DISTRICT/ZONE — A district or zone which encompasses one or more underlying zones and that establishes requirements for wind energy facilities.

F. Applicability.

- (1) The requirements of this section shall apply to all wind energy facilities proposed, operated, modified or constructed after the effective date of this section.
- (2) Wind energy facilities for which a required permit has been properly issued and upon which construction has commenced prior to the effective date of this section shall not be required to meet the requirements of this section; provided, however, that:
 - (a) Any such preexisting wind energy facility which does not provide energy for a continuous period of 12 months shall meet the requirements of this section prior to recommencing production of energy.
 - (b) No modification or alteration to an existing wind energy facility shall be allowed without full compliance with this section.
 - (c) Any wind measurement tower existing on the effective date of this section shall be removed no later than 24 months after said effective date, unless a special use permit for said wind energy facility is obtained.
- (3) Wind energy facilities may be either principal or accessory uses. A different existing use or an existing structure on the same site shall not preclude the installation of a wind energy facility or a part of such facility on such site. Wind energy facilities constructed and installed in accordance with this section shall not be deemed expansions of a nonconforming use or structure.

G. Creation of Wind Overlay Zones.

- (1) Wind Overlay Zones may be created in the Agricultural/Residential (AR1) Zone only.
- (2) Initial requests for Wind Overlay Zones shall be submitted with applications for WECS special use permits. No Wind Overlay Zone may be initially created without specific requests for WECSs.
- (3) Once a Wind Overlay Zone has been created, new WECSs or accessory structures or facilities may be added in that zone by grant of a special use permit pursuant to the requirements of this section.

H. Applications for wind energy conversion systems. A joint application for creation of a Wind Overlay Zone and special use permit for individual WECS shall include the following:

- (1) Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.

- (2) Name and address of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner (a) confirming that the property owner is familiar with the proposed applications and (b) authorizing the submission of the application.
- (3) Address, or other property identification, of each proposed tower location, including Tax Map section, block and lot number.
- (4) A description of the project, including the number and maximum rated capacity of each WECS.
- (5) A plot plan prepared by a licensed surveyor or engineer drawn in sufficient detail to clearly describe the following.
 - (a) Property lines and physical dimensions of the site.
 - (b) Location, approximate dimensions and types of major existing structures and uses on site, public roads, and adjoining properties within 500 feet of the boundaries of the proposed Wind Overlay Zone.
 - (c) Location and elevation of each proposed WECS.
 - (d) Location of all aboveground utility lines on the site or within one radius of the total height of the WECS, transformers, power lines, interconnection point with transmission lines and other ancillary facilities or structures.
 - (e) Location and size of structures above 35 feet within a five-hundred-foot radius of the proposed WECS. For purposes of this requirement, electrical transmission and distribution lines, antennas and slender or open lattice towers are not considered structures.
 - (f) The zoning designation of the subject and adjacent properties as set forth on the official Town Zoning Map.⁶³
 - (g) Proposed boundaries of the Wind Overlay Zone.
 - (h) To demonstrate compliance with the setback requirements of this section, circles drawn around each proposed tower location equal to:
 - [1] One-and-a-half times the tower height radius.
 - [2] Five-hundred-foot radius.
 - [3] One-thousand-two-hundred-foot radius.
 - (i) Location of residential structures within 1,200 feet of each proposed tower. The distance from the center of the tower to any off-site residence within 1,200 feet shall be noted.

63. Editor's Note: The Zoning Map is on file in the Town offices.

- (j) All proposed facilities, including access roads, electrical lines, substations, storage or maintenance units and fencing.
- (6) Vertical drawing of the WECS showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs and access doors. One drawing may be submitted for each WECS of the same type and total height.
- (7) Landscaping plan depicting vegetation describing the area to be cleared and the specimens proposed to be added, identified by species and size of specimen at installation and their locations.
- (8) Lighting plan showing any FAA-required lighting and other proposed lighting. The application should include a copy of the determination by the Federal Aviation Administration to establish required markings and/or lights for the structure, but if such determination is not available at the time of the application, no building permit for any lighted facility may be issued until such determination is submitted.
- (9) List of property owners, with their mailing addresses, within 500 feet of the boundaries of the proposed Wind Overlay Zone. The applicant may delay submitting this list until the Town Board calls for a public hearing on the application.
- (10) Decommissioning plan.
 - (a) The applicant shall submit a decommissioning plan, which shall include:
 - [1] The anticipated life of the WECS;
 - [2] The estimated decommissioning costs in current dollars;
 - [3] How said estimate was determined;
 - [4] The method of ensuring that funds will be available for decommissioning and restoration;
 - [5] The method, such by annual reestimate by a licensed engineer, that the decommissioning cost will be kept current; and
 - [6] The manner in which the WECS will be decommissioned and the site restored, which shall include removal of all structures and debris to a depth of three feet, restoration of the soil, and restoration of vegetation (consistent and compatible with surrounding vegetation), less any fencing or residual minor improvements requested by the landowner.
 - (b) The plan shall include the decommissioning bond required by this section.
- (11) Complaint resolution. The application will include a complaint resolution process to address complaints from nearby residents. The process shall use an independent mediator or arbitrator and include a time limit for acting on a complaint. The applicant shall make every reasonable effort to resolve any complaint.

- (12) An application shall include information relating to the construction/installation of the wind energy conversion facility as follows:
 - (a) A construction schedule describing commencement and completion dates; and
 - (b) A description of the routes to be used by construction and delivery vehicles, and the gross weights and heights of those loaded vehicles.
- (13) Completed Part 1 of the full EAF.
- (14) Applications for special use permits for wind measurement towers subject to this section may be jointly submitted with the WECS.
- (15) For each proposed WECS, include make, model, picture and manufacturer's specifications, including noise decibels data. Include Manufacturers' Material Safety Data Sheet documentation for the type and quantity of all materials used in the operation of all equipment, including, but not limited to, all lubricants and coolants.
- (16) If the applicant agrees in writing in the application that the proposed WECS may have a significant adverse impact on the environment, the Town Board shall issue a positive declaration of environmental significance.
- (17) If a positive declaration of environmental significance is determined by the SEQRA lead agency, the following information shall be included in the draft environmental impact statement (DEIS) prepared for a wind energy facility. Otherwise, the following studies shall be submitted with the application:
 - (a) Shadow flicker. The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECS and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problems.
 - (b) Visual impact. Applications shall include a visual impact study of the proposed WECS as installed, which shall include a computerized photographic simulation, demonstrating any visual impacts from strategic vantage points. Color photographs of the proposed site from at least two locations accurately depicting the existing conditions shall be included. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
 - (c) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed zone.
 - (d) Noise analysis. A noise analysis by a competent acoustical consultant documenting the noise levels associated with the proposed WECS. The study shall document noise levels at property lines and at the nearest residence not

on the site (if access to the nearest residence is not available, the Town Board may modify this requirement). The noise analysis shall provide preexisting ambient noise levels and include low-frequency noise.

- (e) Property value analysis prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact of values of properties adjoining WECS sites, including properties across public roads from the site.
 - (f) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems and other wireless communication.
- (18) Tower design information sufficient to demonstrate compliance with wind-loading requirements.
 - (19) Analysis of potential ice-throwing and damage from blade throw impacts.
 - (20) A statement, signed under penalties of perjury, that the information contained in the application is true and accurate.

I. Application review process.

- (1) Applicants may request a preapplication meeting with the Town Board, or with any consultants retained by the Town Board for application review. Meetings with the Town Board shall be conducted in accordance with the Open Meetings Law.
- (2) Six copies of the application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of application submission. If any variances are requested, variance application fees shall be paid at the time of the receipt of the application.
- (3) Town staff or Town-designated consultants shall, within 30 days of receipt, or such longer time if agreed to by the applicant, determine if all information required under this section is included in the application.
- (4) If the application is deemed incomplete, the Town Board or its designated reviewer shall provide the applicant with a written statement listing the missing information. No refund of application fees shall be made, but no additional fees shall be required upon submittal of the additional information unless the number of WECSs proposed is increased.
- (5) Upon submission of a complete application, including the grant of any application waiver by the Town Board, the Town Clerk shall transmit the application to the Town Board. The applicant shall post the completed application and any accepted environmental impact statements on the Internet. The application shall be referred to the Planning Board in accordance with this section and the Zoning Chapter.
- (6) The Town Board shall hold at least one public hearing on the application. Notice shall be given by first class mail to property owners within 500 feet of the boundaries of the proposed Wind Overlay Zone, and published in the Town's official newspaper, no less than 10 nor more than 20 days before any hearing, but,

where any hearing is adjourned by the Town Board to hear additional comments, no further publication or mailing shall be required. The applicant shall prepare and mail the Notice of Public Hearing prepared by the Town, and shall submit an affidavit of service. The assessment roll of the Town shall be used to determine mailing addresses.

- (7) The public hearing may be combined with public hearings on any environmental impact statement or requested variances.
 - (8) Notice of the project shall also be given, when applicable, to the Chautauqua County Planning Board, if required by General Municipal Law §§ 239-l and 239-m, and to adjoining Towns under Town Law § 264.
 - (9) SEQRA review. Applications for WECS are deemed Type I projects under SEQRA. The Town shall conduct its SEQRA review in conjunction with other agencies, and the record of review by said agencies shall be part of the record of the Town's proceedings. The Town may require an escrow agreement for the engineering and legal review of the applications and any environmental impact statements before commencing its review. At the completion of the SEQRA review process, if a positive declaration of environmental significance has been issued and an environmental impact statement prepared, the Town shall issue a statement of findings, which statement may also serve as the Town's decision on the applications.
 - (10) Upon receipt of the report of the recommendation of the County Planning Board (where applicable), the holding of the public hearing, and the completion of the SEQRA process, the Town Board may approve, approve with conditions or deny the applications, in accordance with the standards in this section.
- J. Standards for WECS. The following standards shall apply to all WECS, unless specifically waived by the Town Board as part of a permit.
- (1) All power transmission lines from the tower to any building or other structure shall be located underground to the maximum extent practicable.
 - (2) No television, radio or other communication antennas may be affixed or otherwise made part of any WECS, except pursuant to the telecommunications facilities provisions of the Town Zoning Chapter. Applications may be jointly submitted for WECS and telecommunications facilities.
 - (3) No advertising signs are allowed on any part of the wind energy facility, including fencing and support structures.
 - (4) Lighting of tower. No tower shall be lit except to comply with FAA requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the site plan. Security lighting shall be designed to minimize light pollution, including the use of light hoods, low glare fixtures, and directing lights at the ground.
 - (5) All applicants shall use measures to reduce the visual impact of WECSs to the extent possible. WECSs shall use tubular towers. All structures in a project shall

be finished in a single, nonreflective matte finished color or a camouflage scheme. Individual WECSs within a Wind Overlay Zone shall be constructed using wind turbines whose appearance, with respect to one another, is similar within and throughout the zone, to provide reasonable uniformity in overall size, geometry and rotational speeds. No lettering, company insignia, advertising or graphics shall be on any part of the tower, hub or blades.

- (6) The use of guy wires is prohibited.
- (7) No WECS shall be installed in any location where its proximity with existing fixed broadcast, retransmission or reception antenna for radio, television or wireless phone or other personal communication systems would produce electromagnetic interference with signal transmission or reception. No WECS shall be installed in any location along the major axis of an existing microwave communications link where its operation is likely to produce electromagnetic interference in the link's operation. If it is determined that a WECS is causing electromagnetic interference, the operator shall take the necessary corrective action to eliminate this interference, including relocation or removal of the facilities, or resolution of the issue with the impacted parties. Failure to remedy electromagnetic interference is grounds for revocation of the special use permit for the specific WECS or WECSs causing the interference.
- (8) All solid waste, hazardous waste and construction debris shall be removed from the site and managed in a manner consistent with all appropriate rules and regulations.
- (9) WECSs shall be designed to minimize the impacts of land clearing and the loss of open space areas. Land protected by conservation easements shall be avoided when feasible. The use of previously developed areas will be given priority wherever possible.
- (10) WECSs shall be located in a manner that minimizes significant negative impacts on rare, endangered and threatened animal species in the vicinity, particularly bird and bat species.
- (11) Wind energy conversion facilities shall be located in a manner consistent with all applicable state and federal wetlands laws and regulations.
- (12) Stormwater runoff and erosion control shall be managed in a manner consistent with all applicable state and federal laws and regulations.
- (13) The maximum total height of any WECS shall be 420 feet.
- (14) Construction of the WECS shall be limited to the hours of 8:00 a.m. to 8:00 p.m. except for certain activities that require cooler temperatures than possible during the day, subject to approval from the Town.
- (15) Substations required to serve WECS are an essential public service under this Zoning Chapter. Substations shall be screened from public view.

- (16) The Town of Pomfret shall be named as an additional insured under the general liability policy of the applicant, the amount of which insurance shall be no less than an amount to be determined by the Town Board given the nature and scope of the project proposed by the applicant.
- (17) Any construction or ground disturbance involving agricultural land shall be done according to the NYS Department of Agriculture and Markets' publication titled "Guidelines for Agricultural Mitigation for Wind Power Projects."

K. Required safety measures.

- (1) Each WECS shall be equipped with both manual and automatic controls to limit the rotational speed of the rotor blade so it does not exceed the design limits of the rotor.
- (2) Unless the property owner submits a written request that no fencing be required, a six-foot-high fence with a locking portal shall be required to enclose each tower or group of towers. The color and type of fencing for each WECS installation shall be determined on the basis of individual applications as safety needs dictate. The entrances to entrance roads shall be gated and kept locked.
- (3) Appropriate warning signs shall be posted. At least one sign shall be posted at the base of the tower warning of electrical shock or high voltage. A sign shall be posted on the entry area of fence around each tower or group of towers and any building (or on the tower or building if there is no fence) containing emergency contact information, including a local telephone number with twenty-four-hour, seven-day-a-week coverage. The Town Board may require additional signs based on safety needs.
- (4) No climbing pegs or tower ladders shall be located closer than 12 feet to the ground level at the base of the structure for freestanding single pole.
- (5) The minimum distance between the ground and any part of the rotor or blade system shall be 20 feet.
- (6) WECSs shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked.
- (7) Accurate maps of the underground facilities shall be filed with the Town and with "Dig Safely New York (1-800-962-7962)" or its successor.

L. Traffic routes.

- (1) Construction of WECS poses potential risks because of the large-size construction vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles for WECS and/or associated facilities shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: minimizing traffic impacts from construction and delivery vehicles; minimizing WECS related traffic during times of school bus activity; minimizing wear and tear on local roads; and minimizing impacts on local business operations. Permit conditions may require remediation

during construction, may limit WECS-related traffic to specified routes, and may include a plan for disseminating traffic route information to the public, and all applicable state, county and municipal highway authorities and superintendents whose roads are included in the WECS traffic routes plan. Notification to all applicable highway authorities and superintendents will include the number and type of vehicles and their size, their maximum gross weight, the number of round trips, and the dates and time periods of expected use of designated traffic routes.

- (2) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.
- (3) If the applicant uses any seasonal use highway in the off-season, it shall be solely responsible for the maintenance of said highway, including but not limited to snow plowing. No act of maintenance on a seasonal use highway by an applicant shall be considered as Town maintenance of that highway for purposes of determining the seasonal use status of the highway.

M. Setbacks for wind energy conversion systems.

- (1) The statistical sound pressure level generated by a WECS shall not exceed L_{10-50} dBA measured at any residence existing at the time of completing the SEQRA review of the application. If the ambient sound pressure level exceeds 48 dBA, the standard shall be ambient dBA plus 5 dBA. Independent certification shall be provided before and after construction demonstrating compliance with this requirement.
- (2) In the event audible noise due to WECS operations contains a steady pure tone, such as a whine, screech or hum, the standards for audible noise set forth in Subsection M(1) of this subsection shall be reduced by five dBA. A pure tone is defined to exist if the 1/3 octave band sound pressure level in the band, including the tone, exceeds the arithmetic average of the sound pressure levels of the two contiguous 1/3 octave bands by five dBA for center frequencies of 500 Hz and above, by eight dBA for center frequencies between 160 Hz and 400 Hz, or by 15 dBA for center frequencies less than or equal to 100 and 125 Hz.
- (3) In the event the ambient noise level (exclusive of the development in question) exceeds the applicable standard given above, the applicable standard shall be adjusted so as to equal the ambient noise level. The ambient noise level shall be expressed in terms of the highest whole number sound pressure level in dBA, which is exceeded for more than five minutes per hour. Ambient noise levels shall be measured at the exterior of potentially affected existing residences, schools, hospitals, churches and public libraries. Ambient noise level measurement techniques shall employ all practical means of reducing the effect of wind generated noise at the microphone. Ambient noise level measurements may be performed when wind velocities at the proposed project site are sufficient to allow wind turbine operation, provided that the wind velocity does not exceed 30 mph at the ambient noise measurement location.

- (4) Any noise level falling between two whole decibels shall be the lower of the two.
- (5) Each WECS shall be set back from site boundaries, measured from the center of the WECS, a minimum distance of:
 - (a) Five hundred feet from the nearest site boundary property line.
 - (b) Five hundred feet from the nearest public road.
 - (c) One thousand two hundred feet from the nearest off-site residence existing at the time of application, measured from the exterior of such residence.
 - (d) One and a half times the total height of the WECS from any non-WECS structure or any aboveground utilities.
 - (e) One hundred feet from state-identified wetlands. This distance may be adjusted to be greater or lesser at the discretion of the reviewing body, based on topography, land cover, land uses and other factors.
 - (f) Five hundred feet from gas wells, unless waived in writing by the property owner.

N. Noise and setback easements. In the event the noise levels resulting from a WECS exceed the criteria established in this section, or any setback requirement is not met, a waiver will be granted from such requirement by the Town Board in the following circumstances:

- (1) Written consent from the affected property owners has been obtained stating that they are aware of the WECS and the noise and/or setback limitations imposed by this section, that they wish to be part of the site as defined in this section, and that their consent is granted to:
 - (a) Allow noise levels to exceed the maximum limits otherwise allowed; or
 - (b) Allow setbacks less than required; and
- (2) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the County Clerk's office describing the benefited and burdened properties. Such easements shall be permanent and may not be revoked without the consent of the Town Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this section, or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.
- (3) In any case where written consent is not obtained, a variance from the Zoning Board of Appeals shall be required.

O. Creation of Wind Overlay Zones and issuance of special use permits.

- (1) Upon completion of the review process, the Town Board shall, upon consideration of the standards in this section and the record of the SEQRA review, issue a

written decision with the reasons for approval, conditions of approval or disapproval fully stated.

- (2) If approved, the Town Board will direct the Town Clerk to modify the Official Map to reflect the creation of the Wind Overlay Zones, and direct Town staff to issue a special use permit for each WECSs upon satisfaction of all conditions for said permit, and direct the Building Inspector to issue a building permit, upon compliance with the Uniform Fire Prevention and Building Code and the other conditions of this section.
- (3) The decision of the Town Board shall be filed within five days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- (4) If any approved WECS is not substantially commenced within two years of issuance of the permit, the special use permit shall expire.

P. Abatement.

- (1) If any WECS remains nonfunctional or inoperative for a continuous period of one year, the applicant agrees that, without any further action by the Town Board, it shall remove said system at its own expense. Removal of the system shall include at least the entire aboveground structure, including transmission equipment and fencing, from the property. This provision shall not apply if the applicant demonstrates to the Town that it has been making good faith efforts to restore the WECS to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.
- (2) Nonfunction or lack of operation may be proven by reports to the Public Service Commission, NYSEERDA, or by lack of income generation. The applicant shall make available (subject to a nondisclosure agreement) to the Town Board all reports to and from the purchaser of energy from individual wind energy conversion systems, if requested necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- (3) Decommissioning bond or fund. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town for the removal of nonfunctional towers and appurtenant facilities in an amount to be determined by the Town for the period of the of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.

Q. Limitations on approvals; easements on Town property.

- (1) Nothing in this section shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the wind energy facility. Nothing in this section shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any wind energy facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

- (2) Pursuant to the powers granted to the Town to manage its own property, the Town may enter into noise, setback or wind flow easements on such terms as the Town Board deems appropriate, as long as said agreements are not otherwise prohibited by state law or this section.

R. Permit revocation.

- (1) Testing fund. A special use permit shall contain a requirement that the applicant fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequent upon request of the Town Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this section and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- (2) Operation. A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- (3) Notwithstanding any other abatement provision under this section, and consistent with § 300-83P(1) and (2), if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular time frame, or order revocation of the special use permit for the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

S. Wind site assessment. The Town Board acknowledges that prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and the feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("Met") towers, shall be permitted as a special use in the Agricultural/Residential (AR1) Use Zone.

T. Applications for wind measurement towers. An application for a wind measurement tower shall include:

- (1) Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and

telephone number of the agent as well as an original signature of the applicant authorizing the representation.

- (2) Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
- (3) Address of each proposed tower site, including Tax Map section, block and lot number.
- (4) Site plan.
- (5) Decommissioning plan, based on the criteria in this section for WECS, including a security bond or cash for removal.

U. Standards for wind measurement towers.

- (1) The distance between a wind measurement tower and the property line shall be at least the total height of the tower. Sites can include more than one piece of property and the requirement shall apply to the combined properties. Exceptions for neighboring property are also allowed with the consent of those property owners.
- (2) Special use permits for wind measurement towers may be issued by the Town Board for a period of up to two years. Permits may be renewed if the facility is in compliance with the conditions of the special use permit.

V. Small wind energy conversion systems.

- (1) Purpose and intent. The purpose of this small WECS section is to provide standards for small wind energy conversion systems designed for home, farm and small commercial use on the same parcel, and that are primarily used to reduce consumption of utility power at that location. The intent of this small WECS section is to encourage the development of small wind energy systems and to protect the public health, safety and community welfare.

(2) Applications.

(a) Applications for small WECS wind energy permits shall include:

- [1] Name, address and telephone number of the applicant. If the applicant will be represented by an agent, the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the agent to represent the applicant.
- [2] Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.

- [3] Address of each proposed tower location, including Tax Map section, block and lot number.
 - [4] Evidence that the proposed tower height does not exceed the height recommended by the manufacturer or distributor of the system.
 - [5] A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Uniform Fire Prevention and Building Code.
 - [6] Sufficient information demonstrating that the system will be used primarily to reduce consumption of electricity at that location.
 - [7] Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
 - [8] A visual analysis of the small WECS as installed, which may include a computerized photographic simulation, demonstrating the visual impacts from nearby strategic vantage points. The visual analysis shall also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.
- (3) Development standards. All small wind energy systems shall comply with the following standards. Additionally, such systems shall also comply with all the requirements established by other sections of this chapter that are not in conflict with the requirements contained in this section.
- (a) A system shall be located on a lot a minimum of one acre in size, however, this requirement can be met by multiple owners submitting a joint application.
 - (b) Only one small wind energy system tower per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one lot for purposes of this section.
 - (c) Small wind energy systems shall be used primarily to reduce the on-site consumption of electricity.
 - (d) Tower heights may be allowed as follows:
 - [1] Sixty five feet or less on parcels between one and five acres.
 - [2] Eighty feet or less on parcels of five or more acres.
 - [3] The allowed height shall be reduced if necessary to comply with all applicable Federal Aviation Requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports.

- (e) The maximum turbine power output is limited to 101 kW.
- (f) The system's tower and blades shall be painted a nonreflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporate nonreflective surfaces to minimize any visual disruption.
- (g) The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas.
- (h) Exterior lighting on any structure associated with the system shall not be allowed except that which is specifically required by the Federal Aviation Administration.
- (i) All on-site electrical wires associated with the system shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers and lines. This standard may be modified by the decisionmaker if the project terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts or similar factors.
- (j) The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.
- (k) At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery. No brand names, logo or advertising shall be placed or painted on the tower, rotor, generator or tail vane where it would be visible from the ground, except that a system or tower's manufacturer's logo may be displayed on a system generator housing in an unobtrusive manner.
- (l) Towers shall be constructed to provide one of the following means of access control, or other appropriate method of access:
 - [1] Tower-climbing apparatus located no closer than 12 feet from the ground.
 - [2] A locked anticlimb device installed on the tower.
 - [3] A locked, protective fence at least six feet in height that encloses the tower.
- (m) Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any aboveground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from three to eight feet above the ground.

- (n) Construction of on-site access roadways shall be minimized. Temporary access roads utilized for initial installation shall be regraded and revegetated to the preexisting natural condition after completion of installation.
 - (o) To prevent harmful wind turbulence from existing structures, the minimum height of the lowest part of any horizontal axis wind turbine blade shall be at least 30 feet above the highest structure or tree within a two-hundred-fifty-foot radius. Modification of this standard may be made when the applicant demonstrates that a lower height will not jeopardize the safety of the wind turbine structure.
 - (p) All small wind energy system tower structures shall be designed and constructed to be in compliance with pertinent provisions of the Uniform Fire Prevention and Building Code.
 - (q) All small wind energy systems shall be equipped with manual and automatic overspeed controls. The conformance of rotor and overspeed control design and fabrication with good engineering practices shall be certified by the manufacturer.
- (4) Standards. A small wind energy system shall comply with the following standards:
- (a) Setback requirements. A small WECS shall not be located closer to a property line than 1 1/2 times the total height of the facility.
 - (b) Noise. Except during short-term events, including utility outages and severe wind storms, a small WECS shall be designed, installed and operated so that noise generated by the system shall not exceed the 50 decibels (dBA), as measured at the closest neighboring inhabited dwelling.
- (5) Abandonment of use.
- (a) A small WECS which is not used for 12 successive months shall be deemed abandoned and shall be dismantled and removed from the property at the expense of the property owner. Failure to abide by and faithfully comply with this section or with any and all conditions that may be attached to the granting of any building permit shall constitute grounds for the revocation of the permit by the Town.
 - (b) All small WECS shall be maintained in good condition and in accordance with all requirements of this section.

W. Waivers.

- (1) The Town Board may, after a public hearing (which may be combined with other public hearings on wind energy facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this section if, in the opinion of the Town Board, the grant of said waiver is in the best interests of the Town. The Town Board may consider reasonable factors in evaluating the request, which may include; when applicable, the impact of the

waiver on the neighborhood, including the potential detriment to nearby properties, the benefit to the applicant, feasible alternatives and the scope of the request.

- (2) The Town Board may attach such conditions as it deems appropriate to waive approvals as it deems necessary to minimize the impact of the waiver.

X. Fees.

- (1) Fees for Wind Overlay Zone rezoning and all necessary permits shall be adopted by resolution of the Town of Pomfret Town Board. The cost of all legal notices and mailings shall be assessed to the applicant.⁶⁴

- (2) Building permits.

- (a) The Town believes the review of building and electrical permits for wind energy facilities requires specific expertise for those facilities. Accordingly, the permit fees for such facilities shall be increased by administrative costs in an amount as set by resolution of the Town Board, plus the amount charged to the Town by the outside consultant hired by the Town to review the plans and inspect the work. In the alternative, the Town and the applicant may enter into an agreement for an inspection and/or certification procedure for these unique facilities. In such case, the Town and the applicant will agree to a fee arrangement and escrow agreement to pay for the costs of the review of the plans, certifications or conduct of inspections as agreed by the parties.⁶⁵

- (b) The applicant shall, prior to the receipt of a building permit, demonstrate that the proposed facility meets the system reliability requirements of the New York Independent System Operator, or provide proof that it has executed an interconnection agreement with the New York Independent System Operator and/or the applicable transmission owner.

- (3) Nothing in this section shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

- (4) The Town Board may amend these fees by resolution after a properly noticed public hearing.

Y. Tax exemption. The Town hereby exercises its right to opt out of the tax exemption provisions of Real Property Tax Law § 487, pursuant to the authority granted by Subdivision 8 of that law.

Z. Enforcement; penalties and remedies for violations.

- (1) The Town Board shall appoint such Town staff or outside consultants as it sees fit to enforce this section.

64. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

65. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (2) Any person owning, controlling or managing any building, structure or land who shall undertake a wind energy conversion facility or wind monitoring tower in violation of this section or in noncompliance with the terms and conditions of any permit issued pursuant to this section, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of an offense and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or subject to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amounts set forth herein for each violation and each week said violation continues shall be deemed a separate violation.⁶⁶
- (3) In case of any violation or threatened violation of any of the provisions of this section, including the terms and conditions imposed by any permit issued pursuant to this section, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation, to prevent the illegal act.

§ 300-84. Junk vehicles.

- A. Purpose. It is the intent of this section to minimize safety, health and aesthetic related problems by limiting, according to district and lot size, the storage outdoors of junk vehicles.
- B. Number of vehicles. The maximum number of junk vehicles that may be stored outdoors shall be as follows:

Districts	Maximum Number
R1, R2, R3,	0
B1, B2	0
AR1, AR2, C1	1
I1, I2	1

- C. Location of vehicles. Junk vehicles shall be stored out of sight as viewed from adjacent properties and roadways to the greatest degree possible. Additionally, junk vehicles shall be placed a minimum of 50 feet from property lines of adjacent landowners and roadways.
- D. Restoration of vehicle outdoors. Sustained progress in restoring or repairing a vehicle to operational condition shall be allowed under the following conditions, and said vehicle shall not constitute a junk vehicle:

⁶⁶ Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) A maximum of one vehicle per two acres of land shall be allowed for restoration with a maximum of three allowed.
 - (2) The entire restoration shall take a reasonable time to accomplish.
 - (3) Such vehicles shall be located so as to create the least nuisance possible.
 - (4) Noise associated with the restoration shall be limited to reasonable hours.
 - (5) Restoration shall be for personal use and not for profit.
- E. Preexisting junk vehicles. Where more than the maximum number of junk vehicles are present at the time of enactment of this chapter, a maximum of six months from date of written notification shall be allowed for the owner to come into compliance with this section.

§ 300-85. Animals, poultry and birds.

- A. Purpose. This section has as its main purpose the protection of residential neighborhoods from certain nuisances such as noise and odor associated with the keeping of animals. This section only applies to those urbanized districts in which "agricultural land use" as defined in this chapter is not a permitted use.
- B. Conditions. Farm animals, pigeons and other animals shall be regulated in districts where agricultural land use is not a permitted use under the following conditions.
- (1) Commercial operations prohibited. Animals, poultry and birds shall not be raised for profit or as a commercial venture. They shall only be allowed when kept for recreational use or for home consumption of its products.
 - (2) Nuisances. Farm animals which create a nuisance due to odor, noise, etc., shall be prohibited.
 - (3) Fences. Farm type animals shall be fenced so as not to be able to come within 50 feet of adjacent residential structures nor within 10 feet of any boundary line.
 - (4) Horses and cows. Horses and/or cows shall be allowed for noncommercial use where over 10 contiguous acres of pasture are present. The maximum number of horses or cows allowed shall be based on the acres of pasture available with one acre being required per horse or cow.
 - (5) Poultry or birds. The keeping of birds or poultry (domestic or wild) shall be prohibited. No yards, coops, lofts, etc., shall be erected or maintained. This provision shall not include small cage birds such as canaries or parakeets maintained as pets within a residential structure.

§ 300-86. Toxic waste/flammable liquids.

- A. Purpose. For the purpose of protecting present and future generations from the potentially harmful health and safety effects of toxic and flammable materials, the following regulations shall apply to new industries/business:
- B. Conditions.
- (1) Toxic waste. It shall be unlawful to maintain, store, bury or in any other way keep solid or liquid wastes which are considered to be toxic or hazardous. However, toxic wastes which are the results of a locally operated manufacturing process shall be permitted to be temporarily stored for a reasonable period of time pending proper disposal.
 - (2) Flammable liquids. It shall be unlawful to maintain flammable liquids used in commercial operations within 200 feet of any inhabited dwelling unit. The storage of any flammable liquid must be in accordance with state and local regulations. Farm operations shall not be subject to this regulation.

**ARTICLE VII
Administration**

§ 300-87. Enforcement Officers. [Amended 4-19-2004 by L.L. No. 3-2004]

This chapter shall be enforced by the Zoning Enforcement Officer and the Building Inspector/Code Enforcement Officer, each of whom shall be appointed for a period of one year by the Town Board. The Zoning Enforcement Officer serves under the supervision of the Town Board and Supervisor, but works closely with the Building Inspector/Code Enforcement Officer, Planning Board and Zoning Board. The proper enforcement of the Town of Pomfret Zoning Chapter will ensure the health, safety and welfare of the citizens of the Town and protect the quality of life in the Town of Pomfret.

§ 300-88. Duties. [Amended 6-12-1996 by L.L. No. 1-1996; 4-19-2004 by L.L. No. 3-2004]

- A. The Zoning Enforcement Officer is the Town officer on land use regulation and enforcement of the Zoning Chapter, together with such other duties and matters as may be assigned by the Town Board from time to time, and the duties include, but are not limited to:
- (1) Enforcement of the Zoning Chapter of the Town of Pomfret.
 - (2) Enforcement of special use permits, area variances and use variances granted by the Zoning Board of Appeals, together with any and all conditions attached thereto.
 - (3) Assisting in the review of building permit applications for compliance with zoning rules and regulations.
 - (4) Referring and routing of applications to the Zoning Board of Appeals, Planning Board or the Building Inspector/Code Enforcement Officer for processing of

special use permits, variances, building permits and interpretations of the Zoning Chapter by the Zoning Enforcement Officer and/or the Building Inspector/Code Enforcement Officer.

- (5) Investigating complaints and issues related to the Zoning Chapter of the Town of Pomfret, implementing a system for said investigations, issuing notices of violations, commencing court enforcement of alleged violations of the Zoning Chapter. The Zoning Enforcement Officer is specifically authorized to prepare, file and issue appearance tickets for alleged violations of the Zoning Chapter of the Town of Pomfret and to serve the same.
 - (6) Reporting activities to the Town Board, Planning Board and Zoning Board of Appeals as the particular matters may warrant.
- B. The Building Inspector/Code Enforcement Officer is the Town officer on land use regulation, the Uniform Code, the Zoning Chapter of the Town of Pomfret and such other duties and matters as may be assigned by the Town Board from time to time, and the duties include, but are not limited to:
- (1) Issue building permits or refuse to issue same, and state reasons for such refusal to the applicant.
 - (2) Record all applications for permits and all permits issued with notations regarding special conditions involved.
 - (3) Receive all required fees and deposit them with the Town Clerk at least monthly.
 - (4) Report to the Town Board, Zoning Board of Appeals and Planning Board.
 - (5) Submit reports as may be deemed necessary from time to time by the Town Board.
 - (6) Whenever possible or advisable under the Zoning Chapter, or under the Uniform Code, assist applicants for building permits and the preparation of applications for same.
 - (7) Serve or cause to be served all notices that may be required in connection with the Uniform Code, other local, state or federal regulations coming under the jurisdiction of the Code Enforcement Officer or Building Inspector and/or the Zoning Chapter of the Town of Pomfret.
 - (8) Notify Fire Code Inspector and the Assessors Office of all building permits issued.
 - (9) Perform any and all inspections required by the Uniform Code in addition to any inspections which in the judgment of the Building Inspector/Code Enforcement Officer are necessary to ensure conformance with permits issued.
- C. In the absence of the Zoning Enforcement Officer, the Building Inspector/Code Enforcement Officer shall also have all duties and authorities conferred by this chapter upon the Zoning Enforcement Officer.

§ 300-89. Permits. [Amended 4-19-2004 by L.L. No. 3-2004]

- A. Permit required. No building, structure, accessory use or lot shall be erected, added to, structurally enlarged or changed or modified from one use to the other until the building permit and/or zoning permit has been issued by the appropriate enforcement officer. Excluded from the permit requirements are the following:
- (1) Interior modifications, unless additional dwelling units or different uses are created.
 - (2) Home repairs or improvements not involving additions or enlargement of floor space.
 - (3) Refer to Article IV, District Regulations, for other exclusions.
 - (4) Where a permit is not required under the Uniform Code.
- B. Permit contents. An application for a building permit shall be made on a form obtained from the Building Inspector/Code Enforcement Officer. The form shall, at a minimum, contain the following:
- (1) Applicant information — name, address, phone number.
 - (2) Property identification — street address and Section/Block/Lot.
 - (3) Project description, including purpose, proposed use.
 - (4) Construction type — height, family units, lot dimensions, setbacks, accessory buildings, etc.
 - (5) Other information — copy of Health Department permit, off-street parking, location of wetlands, floodplains, need for curb cut.
 - (6) Signature of applicant.
 - (7) Plot plan drawn to approximate scale showing the lot size, setback, highways, existing and proposed structures, and any other pertinent features as determined by the Building Inspector/Code Enforcement Officer.
 - (8) Together with all other information required by the Uniform Code.
- C. Commercial permit requirements. All applications for permits for commercial buildings must contain information detailing drainage and landscaping plans, off-street parking, off-street loading, and any other data the permitting board deems necessary, together with all other information required under the Uniform Code.
- D. Flood permits. Any construction or development on real property within any area of special flood hazard as determined by either local, state or federal rule, regulation or map shall be governed by the Zoning Chapter of the Town of Pomfret and all applicable state and federal rules and regulations for flood hazard areas.
- E. Validity. Building permits shall be valid for a one-year period only. Within one year from the date that the building permit is granted, the exterior of the structure shall be

completed, backfilling and rough grading will be accomplished, and no new building materials will be stored outside. One-year extensions shall be allowed for just cause in all districts.

- F. Notification. Attempts shall be made to notify in writing property owners of lands adjacent to parcels involved in applications for building permits, zoning permits, special use permits, variances or applications to amend district regulations or district maps as required by this Zoning Chapter and/or other applicable state or federal regulation. Any failure of any property owner to receive such notice, however, shall not be a basis for invalidating the issuance of any such building permit or zoning permits, nor of contesting the actions of the municipality, its officers, boards or agents.

G. Decisions.

- (1) All decisions made by the Building Inspector/Code Enforcement Officer to grant or deny a building permit shall be made in writing within 20 days from the time that the completed building permit applications is submitted, along with full payment of the required fee.
- (2) The decisions shall, at a minimum, include the project description, location information and reference to the section or sections of the Zoning Chapter or Uniform Code applicable to the decision.

§ 300-90. Schedule of fees.

- A. Each application for a permit of certification is to be accompanied by a certified check in the amount of the appropriate fee as established by resolution of the Town Board in the Inspection Fee Schedule of the Township Zoning Enforcement Officer. [Amended 10-21-1996 by L.L. No. 3-1996; 10-14-1998⁶⁷]
- B. The Town Board reserves the right to amend the fee schedule, from time to time, by resolution of the Town Board. These amendments shall be posted on the Town bulletin board and filed in the Town Clerk's office and with the enforcement officer.

ARTICLE VIII
Nonconforming Uses

§ 300-91. Continuation.

The lawful use of any building or land existing at the time of the enactment of this chapter may be continued although such use does not conform with the provisions of this chapter. However, all legally preexisting uses which do not conform with specific provisions of this chapter shall not be required to comply with these provisions unless it is specifically stated within this chapter that they must comply within a certain reasonable time period.

67. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 300-92. Alteration of structures.

- A. Unsafe structures. Nonconforming buildings damaged by fire, wind and other catastrophic causes as well as structures declared to be unsafe due to general dilapidation may be restored or rebuilt for the nonconforming use it was used for last. Unsafe structures cannot be restored or rebuilt if it would result in a use which is more nonconforming than the structure was prior to becoming unsafe. When the unsafe condition was caused by fire, wind or any catastrophic causes, the permit must be applied for within six months from the date of the fire, etc. Otherwise, the building permit need not be granted, as decided by the Municipal Board.
- B. Alterations of structures. A nonconforming structure may be added to or altered during its life to an extent of up to 50% of the market value of the building, as long as the alterations do not cause the structure to be more nonconforming. If the alterations are made to bring the building into conformity with all provisions of this chapter, then the 50% rule does not apply. Alterations above 50% shall be allowed if all conditions of this chapter are met.

§ 300-93. Prior approved construction.

Nothing herein contained shall require any change in plan, construction or designated use of a building for which a building permit has been heretofore issued and the construction of which shall have been diligently carried on within three months of the date of such permit.

§ 300-94. Cessation.

Whenever a nonconforming use has been discontinued for a period of one year, such use shall not thereafter be reestablished, and any future use shall be in conformity with the provisions of this chapter.

§ 300-95. Displacement.

No nonconforming use shall be extended or enlarged to displace a conforming use on the property or adjacent property.

§ 300-96. District changes.

Whenever the boundaries of a district or zone shall be changed so as to transfer an area from one district or zone to another district or zone of a different classification, the provisions of this chapter shall also apply to any uses made nonconforming as a result of the change.

§ 300-97. Nonconforming yard changes.

A permitted use which is not in conformance with yard requirements (e.g., setbacks, etc.) may be removed and replaced with another structure (same use) which is the same or more in compliance with the yard requirements without going through area variance procedures. The Enforcement Officer shall determine the applicability of this section to specific cases.

Additionally, where an existing structure does not comply with setback requirements, additions to the structure may be made where the setbacks will not be further violated. Generally, this shall apply to the filling in of irregularly shaped structures.

§ 300-98. Use changes.

- A. Once changed to a conforming use, no building or land shall be permitted to revert to a nonconforming use.
- B. A legal nonconforming use may be changed to another nonconforming use which is of such a character so as to be equal or less of a nuisance and more in conformance with the Zoning Chapter requirements. The Zoning Board of Appeals shall make all determinations as to what new nonconforming uses would be allowable through the normal use variance procedures (see section on variances, § 300-102).

**ARTICLE IX
Zoning Board of Appeals**

§ 300-99. Creation; membership. ⁶⁸

A Zoning Board of Appeals is hereby created. Said Board shall be appointed and function in accordance with the enabling law. Said Board shall consist of five members. Two alternate members shall be appointed in accordance with Town Law § 267, Subdivision 11. The Board may prescribe for its affairs. Should any Board member have four consecutive unexcused absences, this shall constitute grounds for removal pursuant to § 267, Subdivision 9, of the Town Law.

§ 300-100. Duties and procedures.

- A. Duties. The Zoning Board of Appeals shall act in strict accordance with procedures specified by law and by this Zoning Chapter. The major duties of the Board shall be to hear and decide on variance requests as well as to interpret the meaning of the Zoning Chapter as requested. Additionally, they shall hear requests for selected special use permits when a variance (use or area) is also required.
- B. Format for requests. All requests shall be in writing on forms prescribed by the Zoning Board of Appeals. Specific provisions of the Zoning Chapter shall be referred to, and as a minimum, the following information shall be provided by the person requesting the variance/interpretation:
 - (1) Property identification;
 - (2) Project description;
 - (3) Drawing of sufficient detail to provide needed information sufficient to decide on the request;

68. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (4) Reasons for permit denial;
 - (5) Proof of unnecessary hardship or practical difficulties; and
 - (6) Hearing information.
- C. Referral to Planning Board. On an optional basis, the Zoning Board of Appeals may request in writing a recommendation by the Planning Board. The failure of the Planning Board to submit said report shall be deemed to be an approval of the appeal or interpretation in favor of the applicant.
- D. Hearings. All hearing procedures shall be in accordance with appropriate laws with respect to notices, timeliness, etc.
- E. Decisions. Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings. Decisions shall be made in a timely manner in accordance with state law. As per state law, a majority of the membership is needed to pass or reject any request.
- F. Time requirements. All appeals to the Zoning Board of Appeals for interpretations or variances shall be submitted to the Zoning Board of Appeals within 60 days of the date of denial of the application.⁶⁹

§ 300-101. Interpretation.

The Zoning Board of Appeals shall have the power to interpret the meaning of this Zoning Chapter whenever called upon by the Municipal Board, Zoning Officer, or an aggrieved party. This shall include the power to reverse any order, requirement, decision or determination of an administrative official or board. This interpretive power shall include the determination of district boundary lines.

§ 300-102. Use and area variances.

- A. Reasons for variances. The Zoning Board of Appeals has the authority to vary or modify the strict letter of the Zoning Chapter where a literal interpretation would cause practical difficulties (area variances) or unnecessary hardships (use variance).
- B. Applicability and limitations.
- (1) The Zoning Board of Appeals can decide appeals from a person who feels aggrieved by a decision of the Enforcement Officer.
 - (2) The Zoning Board of Appeals has absolutely no power to amend the Zoning Chapter and must exercise great care to insure that its rulings do not, in effect, amend the Zoning Chapter.
- C. Basis for granting area variances.

⁶⁹. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (1) Area variances provide relief of a dimensional nature, (e.g., lot shape or grade) and must be based on practical difficulty. The burden of proof is on the applicant and if relief is warranted, it should be the minimum necessary.
- (2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:
 - (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties would be created by the granting of the area variance.
 - (b) Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an area variance.
 - (c) Whether the requested area variance is substantial.
 - (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

D. Basis for granting use variances.

- (1) Use variances provide relief to an applicant who is denied through application of the Zoning Chapter by the permitting board the right to use land or structure in a certain manner since the use is not listed as an allowable use in the Zoning Chapter. In order to be granted the use variance the applicant must prove that unnecessary hardship exists, and this is accomplished by showing all of the following:
 - (a) The applicant cannot realize a reasonable return for a permitted use under the zoning regulations, provided that lack of a return is substantial as demonstrated by competent financial evidence.
 - (b) That the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood.
 - (c) That the requested use variance if granted will not alter the essential character of the neighborhood.
 - (d) That the alleged hardship has not been self-created.

- E. In granting any variance, be it a use variance or area variance, the Zoning Board of Appeals shall prescribe any conditions that it deems to be necessary or desirable and are in compliance with the intent of the Zoning Chapter. The decisions must be written in the form of a resolution and must state in detail the reasons for granting or denying the variance and the conditions imposed.

- F. Temporary variances. The Zoning Board of Appeals may issue, for uses which are of a temporary nature, a variance. Said variance shall clearly state the conditions of the variance to include when it shall terminate, the possibility of renewal, and other conditions deemed necessary.

§ 300-103. Special use permits.

- A. Applicability. The Zoning Board of Appeals shall be responsible for all special use permits/site plans which are not under the jurisdiction of the Municipal Board [see § 300-108B(1)].
- B. Basis for granting special use/site plan permits.
- (1) Applicability. The Zoning Board of Appeals shall hear all requests for special use permits for all projects not under the jurisdiction of the Municipal Board.
 - (2) General provisions. The special uses listed in this Zoning Chapter for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
 - (3) Standards. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it and the location of the site with respect to the existing or future streets giving access to it shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls, and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations or lights than would be the operations of any permitted use.
 - (4) Conditions.
 - (a) In the granting of special use permits, the permitting board shall attach such conditions and safeguards as it deems appropriate under this chapter.
 - (b) The supplemental section of this chapter entitled "General conditions," § 300-37, will be referred to and used as a checklist of possible conditions to be attached to the special use permit being requested, and this section is not all-inclusive.
 - (c) A plan for the proposed development of a site for designated special use shall be submitted with an application for a special use permit, and the plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, open spaces, landscaping and any other pertinent information that the permitting board deems necessary.

(5) Administrator.

(a) Procedures. The permitting board shall act in strict accordance with procedure specified by law and by the Zoning Chapter with regard to public hearings, notices, publications, etc.

(b) Expiration. ⁷⁰

[1] No nonconforming use which shall have been discontinued for a period exceeding 12 months shall be resumed, nor shall it be replaced by another nonconforming use.

[2] A use variance or area variance granted by the Zoning Board of Appeals of the Town of Pomfret shall expire and be null and void and of no further effect if said use has been discontinued for a period exceeding 12 months.

[3] Further, the grant of a use variance or an area variance by the Zoning Board of Appeals of the Town of Pomfret shall become null and void 12 months from the date of issuance of same, unless said use has been implemented. Implementation shall be determined based on whether the grantee of the variance has obtained a building permit, if necessary, and substantial progress has been made on said building permit by erection of the structure and/or commencement of the use, whichever was the subject of the variance application before the Zoning Board of Appeals.

[4] A special use permit issued by the Zoning Board of Appeals of the Town of Pomfret, which use shall have been discontinued for a period exceeding 12 months, shall be deemed null and void, expired, and of no further effect.

(c) Existing violations. ⁷¹

[1] Whenever an application is made to the Town of Pomfret, Code Enforcement Officer, Zoning Officer, Planning Board, or Zoning Board of Appeals, the Code Enforcement Officer shall first determine whether the premises (property or building or other structure) which is the subject of the application presently before the Code Enforcement Officer, Planning Board or Zoning Board of Appeals is also the subject of an existing violation. In such case, the existing violation shall be corrected, remedied, or removed, to the satisfaction of the Code Enforcement Officer, Planning Board, or Zoning Board of Appeals, prior to the present application being taken up under consideration by the Code Enforcement Officer, Planning Board, or Zoning Board of Appeals.

70. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

71. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- [2] Further, neither the Planning Board nor the Zoning Board of Appeals shall have authority to grant a use variance, area variance, special use permit, or site plan review approval, until such time as the existing violation of the subject premises is cured, satisfied, and/or removed.

C. Referral to Planning Board.

- (1) Prior to action on special use permits, the Zoning Board of Appeals may advise the Planning Board of the proposed actions.
- (2) The Planning Board shall have 15 days in which to review the proposed action and return their recommendation to the Zoning Board of Appeals. After the 15 days has expired, the Zoning Board of Appeals may act without receipt of a response.

§ 300-104. Mandatory referral.

- A. Applicability. In accordance with General Municipal Law §§ 239-1 and 239-m, before issuing a special use permit or granting a variance affecting any real property lying within a distance of 500 feet of the boundary of this municipality or from the boundary of any existing or proposed county or state park or other recreation area, or from the right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway, or from the channel owned by the county or for which the county has established channel lines, or from the existing or proposed boundary of any county or state owned land on which a public building or institution is situated, the matter shall be referred to the Chautauqua County Planning Board.
- B. Response time. Within 30 days after receipt of a full statement of such referred matter, the Chautauqua County Planning Board to which referral is made, or an authorized agent of said agency, shall report its recommendations thereon to the Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If the Chautauqua County Planning Board fails to report within such period of 30 days, the Board of Appeals may act without such report. If the Chautauqua County Planning Board disapproved the proposal, or recommends modification thereof, the Board of Appeals shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action.
- C. Report of action. Within seven days after final action by the Board of Appeals, modifications or disapproval of a referred matter, the Board of Appeals shall file a report of the final action it has taken with the Chautauqua County Planning Board which had made the recommendations, modifications or disapproval.

ARTICLE X
Municipal Planning Board

§ 300-105. Creation.

The Municipal Board shall appoint a Planning Board consisting of five members as prescribed by law. The Board may prescribe for its affairs. Should any Board member have four

consecutive unexcused absences, this shall constitute grounds for removal pursuant to § 271, Subdivision 9, of the Town Law.

§ 300-106. Duties.

The Planning Board shall have the following duties with respect to the Zoning Chapter:

A. Recommendations.

- (1) Optional recommendations. The Planning Board shall submit reports within 30 days after referral on any optional matter referred to it.
- (2) Mandatory recommendations. The Planning Board shall submit recommendations to the appropriate Board on all applications for:
 - (a) All special use permits under the jurisdiction of the municipal board;
 - (b) Any special use permits which the Zoning Board of Appeals chooses to refer to the Planning Board; and
 - (c) Zoning amendments.

- B. Review of Zoning Chapter.** To review the Zoning Chapter at least every five years and make written recommendations for amendments, should they be necessary.

§ 300-107. Mandatory referral.

Under General Municipal Law §§ 239-l and 239-m, certain special use permits and amendments must be referred to the County Planning Board prior to local decisions being made. See Article IX, Zoning Board of Appeals, for procedures to be followed. (section on mandatory referrals).

**ARTICLE XI
Municipal Board**

§ 300-108. Duties: amendments and special use permits/site plans.

The Municipal Board shall have the following duties with respect to this Zoning Chapter.

A. Amendments.

- (1) The Municipal Board may from time to time on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter after public notice and hearing.
- (2) The Municipal Board by resolution adopted at a scheduled meeting shall fix the time and place of a public hearing on the proposed amendment and cause notice to be given in accordance with applicable law.

B. Special use permit/site plan review.

- (1) Applicability. The Municipal Board shall hear all requests for special use permits/site plan reviews for any project, including the extension of infrastructure (roads, utilities), as well as all commercial/industrial projects with 25,000 square feet of floor space or more. Requests for mobile home parks shall also be reviewed by the Municipal Board. [Amended 6-13-2007 by L.L. No. 2-2007]
- (2) Special use permit provisions.
 - (a) General provisions. The special uses listed in this Zoning Chapter for which conformance to additional standards are required shall be deemed to be permitted uses in their respective districts, subject to the satisfaction of the requirements and standards set forth herein, in addition to all other requirements of this Zoning Chapter. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case.
 - (b) Standards. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to it, and the location of the site with respect to the existing or future streets giving access to it, shall be such that it will be in harmony with the orderly development of the district and the location, nature and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof. Operations in connection with any special use shall not be more objectionable to nearby properties by reason of noise, fumes, vibrations or lights than would be the operations of any permitted use.
 - (c) Conditions.
 - [1] In the granting of special use permits, the permitting board shall attach such conditions and safeguards as it deems appropriate under this chapter.
 - [2] The supplemental section of this chapter, entitled "General conditions," § 300-37, will be referred to and used as a checklist of possible conditions to be attached to the special use permit being requested. It should not be assumed that this section is all-inclusive.

- [3] A plan for the proposed development of a site for designated special use shall be submitted with an application for a special use permit, and the plan shall show the location of all buildings, lots, parking areas, traffic access and circulation drives, and any other pertinent information that the permitting board deems necessary.
- (d) Procedures. The permitting board shall act in strict accordance with procedure specified by law and by the Zoning Chapter with regard to public hearings, notices, publications, etc.
- (e) Expiration. A special use permit shall be deemed to authorize only one particular use and shall expire if the special use shall cease for more than one year.
- (f) Existing violations. No special use permit shall be issued for a property where there is an existing violation of this chapter.
- (3) Site plan review requirements.
 - (a) Purpose. Site plan review has the purpose of specifying for all involved parties what the intended design, arrangement and uses of the land shall consist of so as to optimize the physical, social and economic effects on the community for specified types of development.
 - (b) Administration.
 - [1] Permits. The permitting board shall be responsible for a site plan review of all commercial development with over 5,000 square feet of floor space or residential development involving more than five dwelling units. In these instances the permitting board shall also be responsible for administering the special use permit requirements, with both processes taking place simultaneously.
 - [2] Expiration. A site plan review shall be deemed to authorize only one particular use and shall expire if the use shall cease for more than one year.
 - [3] Hearings. An attempt shall be made to integrate, where appropriate, the site plan review requirements into the required special use permit hearing, thus eliminating the need for two hearings.
 - [4] Referral. The permitting board shall, within seven days of receipt of the complete application, submit to the Planning Board a request for an opinion on any proposed project. The permitting board shall wait 14 days for a response prior to acting on the matter.
 - [5] Decision requirements. Within 62 days of receipt of the complete application, the permitting board shall render a decision to the Zoning Officer. If no decision is made within the sixty-two-day period, the site

plan shall be considered approved. The applicant shall be notified in writing of its decision with the reasons for the decision specified.⁷⁰

- (c) Information required. Sketches drawn to approximate scale will be prepared by the applicant, where feasible, to display the following information:

[1] Administration, legal and other miscellaneous information.

- [a] Project title and date;
- [b] Name, address and telephone number of applicant, owner (if different), contractor, architect and other major involved parties;
- [c] Construction schedule to include phasing and the completion date;
- [d] Performance bond to include amount, public improvements covered and bond approval;
- [e] Location width and purpose of all easements, public land holdings, leases, covenants, deed restrictions or any other unique land restriction; and
- [f] Record of all applications for permits from the federal, state, or county governments to include approval status.

[2] Existing man-made features to be shown.

- [a] Boundary lines of project site as well as adjacent properties.
- [b] Ownership pattern of all adjacent parcels.
- [c] Existing structures on project site and adjacent property to include location, dimensions, height and use. Decks and accessory structures should also be shown as well as historic structures.
- [d] Roadways to include public roads, private roads or driveways on the site, on- and off-street parking, load/unload zones, access and egress, pedestrian pathways or sidewalks. Width and elevations should be included.
- [e] Utilities shall be identified to include location and size of water, sewer, drainage pipes, telephone, electric, gas and TV cable. Additionally, any solar systems should be identified.
- [f] Miscellaneous features to include fences, signs, outside lighting, public address systems, storage areas and retaining walls shall be shown.
- [g] Fire lanes and fire hydrants, if any exist, should be displayed.

70. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- [h] Recreational areas both on the site and adjacent should be displayed to include public and private facilities. Decks, pools, tennis courts, etc., should be included.
 - [i] Trash or garbage collection areas shall be identified.
 - [j] Services such as banks, schools, retail or service districts should be identified.
 - [k] Zoning district boundaries shall be identified.
 - [l] Other information deemed necessary by the permitting board.
- [3] Existing natural features to be shown.
- [a] Topographic features with a minimum interval of 10 feet but preferably two feet. Areas of steep slope should be delineated.
 - [b] Geographic features such as depth to bedrock and load-bearing capacity for large development proposals.
 - [c] Hydrogeological features, including drainage and runoff patterns, flood hazard areas, wetlands, depth to groundwater and drainage capacity of soil.
 - [d] Landscaping and vegetative cover, including wooded areas, significant isolated trees, ground cover, shrubs and other similar features. Buffers should be identified.
 - [e] Watercourses to include lakes, streams or ponds.
 - [f] Archaeologically significant areas.
 - [g] Significant views of landscapes should be identified.
 - [h] Other information deemed necessary by permitting board.
- [4] New proposal features.
- [a] Referring to the existing man-made and natural features above, provide a description/sketch of any changes that are being proposed.
 - [b] Include construction materials proposed for use.
 - [c] Provide design features.
 - [d] List the positive and negative effects for each existing feature listed above (e.g., traffic to be generated and the effects it will have on specific roadways).

§ 300-109. Referral to Municipal Planning Board.

- A. Prior to action on zoning amendments, special use permits/site plan review permits, the Municipal Board shall advise the Planning Board of the proposed action.
- B. The Planning Board shall have 30 days in which to review the proposed action and return their recommendation to the Municipal Board. After the 30 days has expired, the Municipal Board may act without receipt of a recommendation from the Planning Board.

§ 300-110. Mandatory referral.

General Municipal Law §§ 239-l and 239-m must be followed when amending a zoning law. The mandatory referral section, § 300-104, found in Article IX, Zoning Board of Appeals, should be consulted for the procedure to be followed.

ARTICLE XII**Telecommunications Facilities**

[Added 7-9-1997 by L.L. No. 2-1997]

§ 300-111. Intent.

The Town of Pomfret (hereinafter "Town") recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often, these facilities require the construction of a communications tower and/or similar facilities. The intent of this article is to regulate the location, construction and modification of telecommunication facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable laws by:

- A. Facilitating the provision of wireless telecommunication services to the residents and businesses of the Town.
- B. Regulating the location and number of towers/antennas in the Town.
- C. Minimizing adverse visual impacts of these towers/antennas through proper design, siting and screening.
- D. Preserving and enhancing the positive aesthetic qualities of the natural and man-made environment in the Town.
- E. Avoiding potential damage to adjacent properties from tower failure or falling debris through engineering and careful siting of tower structures.
- F. Providing for the general health, safety and welfare of the Town in and by the regulation of these facilities as such regulation is permitted under applicable federal and/or state law.
- G. Requiring the joint use of towers when available, and encouraging the placement of antennas on existing structures wherever possible.

§ 300-112. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE — A nonhabitable accessory facility or structure serving or being used in conjunction with communications tower and/or similar facility or antenna, and located on the same lot as the communications tower or antenna. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

ANTENNA — A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication service (PSC) and microwave communications.

CO-LOCATED ANTENNAS — Telecommunications facilities which utilize existing towers, buildings or other structures for placement of antennas and do not require construction of a new tower.

FALL DOWN ZONE — The radius around a tower within which all portions of the tower and antennas would fall in the event of a structural failure of the tower.

TELECOMMUNICATION FACILITIES — Towers and/or antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

TOWER — A structure designed to support antennas. It includes without limitation freestanding towers, guyed towers, monopoles and similar structures which do, or do not, employ camouflage technology.

§ 300-113. Permit required.

- A. A telecommunications facility is permitted in any district zoned AR1, B2, I1 or I2, and on any municipal property, only if the Town Zoning Board of Appeals (hereinafter "Zoning Board") grants a special use permit for such facility pursuant to this article. The Zoning Board shall have the right to waive any provision of this article for facilities whose total height above ground does not exceed 35 feet.
- B. Any and all grants of a special use permit for a telecommunications facility under this article shall be nonassignable and nontransferable and shall not run with the land, notwithstanding anything in the general zoning laws of the Town to the contrary.
- C. All applications for telecommunications facilities shall be treated as a Type 1 action under the State Environmental Quality Review Act. Except that if the application is solely for a modification, amendment, change or replacement to the type of antenna array placed on an existing tower; or a co-location application to place additional antenna array on an existing tower, then such application shall not be treated as a Type 1 action under the State Environmental Quality Review Act. [Amended 4-10-2002 by L.L. No. 2-2002]

§ 300-114. General standards for issuance of a permit.

- A. No permit or renewal thereof or modification of the conditions of a current permit relating to a telecommunications facility shall be authorized by the Zoning Board unless it finds that such telecommunications facility:
- (1) Is necessary to meet current or expected demands for the services supported by the telecommunications facility;
 - (2) Conforms with all applicable regulations promulgated by the Federal Communications Commission;
 - (3) Is designed and will be constructed in a manner which minimizes its visual impact;
 - (4) Complies with all other requirements of this article and any other applicable Town laws, including the Zoning Chapter; and
 - (5) Is the most appropriate site within the immediate area for the location of the telecommunication facility.
- B. Any application for a permit to construct telecommunication facilities under this article without a designated, contractually bound provider of telecommunications services using same will be deemed incomplete and nonconforming under this article. [Added 4-10-2002 by L.L. No. 2-2002]
- C. All applicants are required to provide a report which establishes to the satisfaction of the Zoning Board that the applicant is required to provide service to locations which it is not able to serve through existing facilities which are located either within or outside of the Town, showing the specific locations and/or areas the applicant is seeking to serve.

§ 300-115. Co-located antennas preferred.

- A. The shared use of existing or approved telecommunication facilities or other structures shall be preferred to the construction of new facilities. Any application for a telecommunication facility permit, or renewal thereof or modification thereof, shall include proof that reasonable efforts have been made to co-locate with an existing or approved telecommunication facility or upon an existing structure. The application shall include an adequate inventory report specifying existing or approved telecommunication facilities and structures within a one-mile radius of the proposed site if the application is for cellular telephone or personal communication use, or a five-mile radius for other services, and outlining opportunities for shared use as an alternative to the proposed location. The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on all sites in the inventory due to one or more of the following reasons:
- (1) The planned equipment would exceed the structural capacity of the existing or approved telecommunication facility or structure, as documented by a qualified and New York State licensed professional engineer, and the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost;

- (2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the telecommunication facility or structure, as documented by a qualified and New York State licensed professional engineer, and the interference cannot be prevented at a reasonable cost;
 - (3) Existing or approved telecommunication facilities and structures within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and New York State licensed professional engineer; and
 - (4) Other technical reasons make it impracticable to place the planned equipment on existing telecommunication facilities or structures.
- B. Any proposed telecommunication facility shall be structurally, electrically, and in all respects, designed to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the telecommunication facility is over 100 feet in height, or for at least one additional user if the telecommunication facility is over 60 feet in height, but no higher than 100 feet in height. telecommunication facilities must be designed to allow for future rearrangement of antennas upon the facility and to accept antennas mounted at varying heights.

§ 300-116. Siting preferences.

- A. If the applicant demonstrates that the proposed telecommunication facility cannot be accommodated on an existing or approved telecommunication facility or upon an existing structure, the Town prefers that the proposed telecommunication facility be located in a higher intensity use district or on higher intensity use property, provided there is a technologically feasible and available location. The Town's preference, from most favorable to least favorable, is as follows:
- (1) Municipal or government-owned property, including schools and other institutional sites;
 - (2) Utility property;
 - (3) Church sites, when camouflaged as steeples or bell towers; and
 - (4) Commercially zoned sites.
- B. Any request by the Town for information on a preferred alternate site shall not unreasonably delay the application for a special use permit.

§ 300-117. Application procedures.

- A. Application materials. All applicants for a special use permit for a telecommunication facility shall make written application to the Town which application shall include the following in triplicate:

- (1) Town-supplied permit application form;
- (2) Town-supplied long form environmental assessment form in accordance with the State Environmental Quality Review Act;
- (3) Site plan, in form and content acceptable to the Town, prepared to scale and in sufficient detail and accuracy showing at a minimum:
 - (a) The exact location of the proposed tower, together with guy wires and guy anchors, if applicable;
 - (b) The maximum height of the proposed tower;
 - (c) The detail of the type of tower (monopole, guyed, freestanding or other);
 - (d) The color or colors of the tower;
 - (e) The property's boundaries, including a property survey;
 - (f) Proof of the landowner's consent to construct the tower at the location if the applicant is not the landowner, including any lease agreement;
 - (g) The location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower;
 - (h) The names of adjacent landowners;
 - (i) The location, nature and extent of any proposed fencing and landscaping or screening;
 - (j) The location and nature of any proposed utility easements and access roads, if applicable; and
 - (k) Building elevations of accessory structures or immediately adjacent buildings.
- (4) Proof of efforts to co-locate as required in § 300-115A of this article;
- (5) Proof of compliance with § 300-115B of this article regarding accommodations for future antennas;
- (6) "Before" and "after" propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunication facility;
- (7) A search ring prepared by a qualified radio frequency engineer and overlaid on an appropriate background map demonstrating the areas within which the telecommunication facility needs to be located in order to provide proper signal strength and coverage to the target cell;
- (8) A statement from the applicant indicating:

- (a) Why it chose the proposed site;
 - (b) If the site is not a co-located facility, the availability of a suitable structure within the search ring which would have allowed for co-located antennas, with correspondence with other telecommunications companies concerning co-location attached;
 - (c) If the site is not a preferred site as described in 300-116 of this article, to what extent the applicant explored locating the proposed tower in a preferred site, with documentation attached; and
 - (d) Its policy regarding co-location on the proposed tower with other potential future applicants.
- (9) A report from a qualified and New York State licensed professional engineer which:
- (a) In case of a tower:
 - [1] Describes its height and design, including a cross section;
 - [2] Demonstrates its compliance with applicable structural standards; and
 - [3] Describes its capacity, including the number and type of antennas it can accommodate.
 - (b) In the case of an antenna(s) mounted on an existing or proposed telecommunication facility or structure:
 - [1] Describes whether and how the telecommunication facility or structure is suitable to accept the antenna;
 - [2] Describes the proposed method of affixing the antenna(s) to the telecommunication facility or structure, including details of all fixtures and couplings; and
 - [3] Indicates the precise point of attachment.
- (10) An agreement by the applicant, in writing, to remove the telecommunication facility if such facility becomes technically obsolete or ceases to be used for its originally intended purpose for 12 months;
- (11) An agreement by the applicant, in writing, to secure a financial security bond with the Town as assigned, in an amount fixed by the Zoning Board to cover the cost of removal of the telecommunications facility should the Town be required to do so;
- (12) The Town reserves the right upon review of the application to request reasonable, additional, visual and aesthetic information it deems appropriate on a case-by-case basis and as it may pertain to a residential zone, historic district, agricultural use or other special situation; and
- (13) An application fee as set by the Town.

- B. Referral to Zoning Board and Planning Board. Upon receipt of the application materials set forth in Subsection A of this section, the Town shall refer the application to the Town Planning Board. The Planning Board shall review the site plan and recommend changes, if any, to the Zoning Board in accordance with procedures and standards set forth herein. Once review is completed, the Planning Board shall transmit the application to the Zoning Board. The Zoning Board shall consider the application and approve or deny the same in accordance with the procedures and standards set forth herein.
- C. Planning Board procedures and standards. The Planning Board shall review the site plan in accordance with the requirements for any site plan as set forth in Article XI, § 300-108B of this Zoning Chapter.
- D. Zoning Board procedures and standards. The Zoning Board shall determine whether the application shall be approved or denied, with conditions set by the Zoning Board if it deems necessary to protect the health, safety and welfare of the Town and its residents, in accordance with the requirements established for determining a special use permit pursuant to Article IX, § 300-103 of this Zoning Chapter.
- E. Special use permit transferability. Any and all grants of a special use permit for a telecommunications facility under this article shall be nonassignable and nontransferable and shall not run with the land, notwithstanding anything in the general zoning laws of the Town to the contrary.
- F. If the application being examined is one to modify, amend, change or replace the existing antenna array on an existing tower, or to co-locate an additional antenna array on an existing tower, the application procedures outlined in § 300-117A(3), (4), (5), (10) and (11) shall not be applicable to such an application. **[Added 4-10-2002 by L.L. No. 2-2002]**

§ 300-118. Design standards.

Each proposed telecommunications facility shall meet the following design requirements:

- A. Setback requirements.
 - (1) Each telecommunications facility shall be separated from residential dwellings, schools, houses of worship, places of public assembly and designated historical districts by the greater of 500 feet or five times the height of the facility. The Zoning Board may modify this condition if the facility is attached to an existing structure or for other satisfactory reasons supported by substantial evidence.
 - (2) Towers shall meet the setback requirements of the underlying zoning district.
- B. Height restrictions. The maximum height of any tower, including all antennas and other attachments, shall not exceed 150 feet. The height of towers shall be determined by measuring the vertical distance from the tower's point of contact with the ground, or if attached to a structure, the structure's point of contact with the ground, to the highest point of the tower, including all antennas and other attachments. When towers are mounted on other structures, the combined height of the structure and the tower must meet the height restriction.

- C. Fall zone. All permits shall include a fall zone surrounding any support, which fall zone must have a radius of at least equal to the height of such support tower and any antenna attached thereto. The entire fall zone may not include public roads, must be on private property, either owned or leased by the applicant, or for which the applicant has obtained as easement. It may not contain any structure other than those associated with the telecommunications facility and may not be located within any setback area established by this article. If the facility is attached to an existing structure, fall zone requirements may be modified by the Zoning Board.
- D. Lighting. Towers, antennas and masts shall not be artificially lit and shall not display strobe lights unless otherwise required by the Federal Aviation Administration, or other federal, state or local authority. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots or similar areas may be attached to the tower.
- E. Signs and advertising. No tower shall contain any signs or advertising devices. Notwithstanding the foregoing, the Zoning Board may require appropriate signage indicating ownership of the facility and telephone numbers in case of emergency.
- F. Camouflaging. Towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by the Federal Aviation Administration, or other federal, state or local authorities.
- G. Screening. Reasonable landscaping consisting of trees or shrubs to screen the tower from adjacent residential property, or when located in a residential zone, is required. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.
- H. Fencing. Towers and auxiliary structures shall be surrounded by a fence or wall at least eight feet in height of a design approved by the Code Enforcement Officer, so as to make intrusion extremely difficult but with limited visual impact. Barbed wire is not to be used in residential areas or on public property unless specifically permitted by the Zoning Board.
- I. Alarm systems. Towers shall be equipped with an alarm system providing that any intrusion or attempt to climb the fence or wall is signaled to both the local law enforcement agency and to the owner of the facility.
- J. Climbing pegs. There shall be no permanent climbing pegs within 15 feet of the ground on any tower.
- K. Roadways. A road turnaround and one parking space shall be provided to assure adequate year-round emergency and service access. Maximum use of existing roads, public or private, shall be made.
- L. Other uses. All other uses ancillary to the antenna/tower and associated equipment, including but not limited to a business office, maintenance depot or vehicle storage, are prohibited from the site unless otherwise permitted by the zoning of the particular district.

§ 300-119. Continuing standards.

All telecommunication facilities, both predating and postdating this article, shall fulfill the requirements of this section. The Town Code Enforcement Officer is empowered to assist all local law enforcement agencies to enforce these regulations as follows:

- A. The sufficiency of the financial security bond shall be confirmed at least every five years by an analysis of the cost of removal and property restoration performed by a qualified and New York State licensed professional engineer. The results of such analysis shall be forwarded immediately to the Town Code Enforcement Officer. If the bond amount in force is insufficient to cover the cost of removal and restoration, the permit holder shall immediately increase the amount of the bond to cover the full costs.
- B. The facility shall be inspected every two years for structural integrity by a qualified and New York State licensed professional engineer, who must submit a copy of his/her inspection report to the Town Code Enforcement Officer.
- C. Any work to augment or repair the facility must comply with all applicable code requirements, and a building permit shall be obtained to conduct such work.
- D. Any additional antennas, reception or transmission dishes, other similar devices proposed for attachment to an existing facility shall require review in accordance with this section. The intent of this requirement is to ensure the structural integrity, visual aesthetics and land use compatibility of the facility upon which the additional device(s) are to be installed. The application for approval to install additional device(s) shall include certification from a qualified and New York State licensed professional engineer, indicating that the additional device(s) will not adversely affect the structural integrity of the facility. A visual impact analysis shall be included as part of the application for approval to install one or more additional communications devices on an existing facility.
- E. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing construction, additions, repairs or renovations.
- F. The facility shall be maintained in good order and repair at all times. Paint and other finishes on towers, auxiliary buildings, fences and walls shall be renewed as required to maintain the good appearance of the facility. Accumulations of rubbish, papers and other trash on the ground shall be promptly removed. Trees, grass and shrubs shall be trimmed as necessary. Access roads are to be maintained in good working order.

§ 300-120. Exemptions.

The following are exempt from these regulations:

- A. Repair and maintenance of existing towers and antennas;
- B. Antennas used solely for private, residential household television and radio reception; and
- C. Satellite antennas regulated by the Federal Communications Commission.

§ 300-121. Penalties for offenses.

- A. This article is adopted pursuant to the zoning and planning powers granted to the Town under the Town Law of the State of New York. In the event of any violation of this article or any permit(s) issued hereunder, the Town may seek enforcement under any available authority, including but not limited to Town Law § 268 as from time to time amended.
- B. Any facility receiving a Town special use permit under this article which does not substantially meet the requirements and/or conditions of that permit shall have its permit revoked, and the tower and other facilities shall be removed within 90 days of notification of revocation by the Town.

§ 300-122. Exclusivity.

In the event of any conflicts or inconsistencies between this article and any other local law, including the Zoning Chapter, this article is meant to control telecommunication and similar facilities in the Town unless otherwise specifically referenced in this article.

ARTICLE XIII**Sexually Oriented Businesses**

[Added 4-10-2002 by L.L. No. 1-2002]

§ 300-123. Purpose.

It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the Town of Pomfret, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.

§ 300-124. Findings.

Based on evidence concerning the adverse secondary affects of adult uses on the community presented in hearings and in reports made available to the Town Board and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini-Theaters* 426 U.S. 50 (1976), *F.W./PBS, Inc., v. City of Dallas* 493 U.S. 215 (1990), *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 Supreme Court 1382 (2000), and on studies in other communities, including, but not limited to Phoenix, Arizona; Minneapolis/St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma;

Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin. The Town Board finds:

- A. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operation of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- B. Certain employees of sexually oriented businesses defined in this article as adult theaters and adult cabarets engage in higher incidents of certain types of illicit sexual behavior than employees of other establishments.
- C. Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows.
- D. Offering and providing such space encourages such activities, which creates unhealthy conditions.
- E. Persons frequent certain adult theaters, adult arcades and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- F. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- G. That here in Chautauqua County we have, in recent years, had an HIV-AIDS outbreak which has caused the county to become very aware of the inherent problems.
- H. The development and proliferation of adult entertainment facilities without regulations as to sitting, concentration and location may result in the deterioration of residential neighborhoods and business districts. In addition, if these types of businesses are located near schools, churches and/or other youth related facilities, they may adversely affect the public welfare and morals of minors and others residing in the Town of Pomfret.
- I. The findings noted in Subsections A through H raise substantial governmental concerns.
- J. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

§ 300-125. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ADULT BOOK/VIDEO/MEDIA STORE — An establishment having as its stock-in-trade books, magazines, videos and other periodicals which are distinguished or relating to specified sexual activities or specified anatomical areas, as defined herein, or an establishment with a segment or section devoted to the sale or display of such material.

ADULT ENTERTAINMENT FACILITIES — Means and refers to adult newsracks, adult bookstores, adult motion-picture theaters and exotic cabarets.

ADULT MOTION PICTURE/VIDEO THEATER — An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined herein, for observation by persons within the use.

ADULT NEWSRACK — Any machine or device, whether coin-operated or not, which dispenses material which is distinguished or characterized by emphasis depicting, describing or relating to the specified sexual activities or specified anatomical areas defined herein.

EXOTIC CABARET — A nightclub, bar or restaurant or similar commercial establishment which regularly features:

- A. Persons who appear nude or seminude;
- B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas.

SPECIFIED ANATOMICAL AREAS — Less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point immediately above the areola; human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES — Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 300-126. Location.

The following provisions shall apply to the location of adult entertainment facilities: adult entertainment facilities shall be permitted only in B2 Zone, commercial districts, upon approval of a special use permit; no adult entertainment facility shall be permitted within 500 feet of any lot with a residential use; no adult entertainment facilities shall be permitted within 1,000 feet of any:

- A. School.
- B. Religious institution.
- C. Public park or public recreation facility.

§ 300-127. Additional sign requirements.

The following provisions shall apply to signs erected or maintained in connection with adult entertainment facilities: no off-site signs shall be permitted.

§ 300-128. Public display of certain matter prohibited.

Materials offered for sale from adult newsracks shall not be displayed or exhibited in any manner which exposes to the public view any picture or illustration depicting any specified sexual activity or any specified anatomical area. Materials offered for sale or viewing at any adult entertainment facility shall not be displayed or exhibited in a manner which exposes any depiction of specified sexual activity or specified anatomical areas to the view of persons outside the building or off the premises on which such store or theater or use is located.

§ 300-129. Restrictions cumulative in nature.

The restrictions set forth in this article are in addition to any other applicable provision of the Zoning Chapter of the Town of Pomfret. In the even of any conflict between any such provisions, the more restrictive provisions shall be applied.

ARTICLE XIV
Violations and Penalties

§ 300-130. Violations; complaints.

Whenever a violation of this chapter occurs, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Zoning Officer, who shall properly record such complaint and immediately investigate. However, the Municipal Board shall be responsible for insuring compliance with this chapter when it is brought to their attention that a violation may exist, even though no formal complaint is filed.

§ 300-131. Penalties for offenses. [Amended 6-13-2007 by L.L. No. 2-2007]

- A. Any violation of any provision of the Town of Pomfret Zoning Chapter by any person, corporation or entity shall be treated as a violation as defined in the Criminal Procedure Law and Penal Law of the State of New York, and any such violation shall be punishable by the fines and/or imprisonment as prescribed for a violation under the Penal Law and Criminal Procedure Law of the State of New York as from time to time amended.
- B. Each week's continued violation shall constitute a separate, additional violation.

ARTICLE XV
Construal of Provisions

§ 300-132. Interpretation and application.

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirement, adopted for the promotion of the public health, safety or the general welfare. Whenever the requirements of this chapter are at variance with other requirements of this chapter or the requirements of any other lawfully adopted rules regulations or ordinances, the most restrictive, or that imposing the higher standards, shall govern.

APPENDIX

**DISPOSITION
LIST**

Chapter DL

DISPOSITION LIST

§ DL-1. Disposition of legislation.

The following is a chronological listing of land use legislation of the Town of Pomfret adopted since the publication of the Code, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] The last land use legislation reviewed for the original publication of the Code was L.L. No. 3-2007, adopted 6-22-2007.

§ DL-1. Disposition of legislation.

Enactment	Adoption Date	Subject	Disposition
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